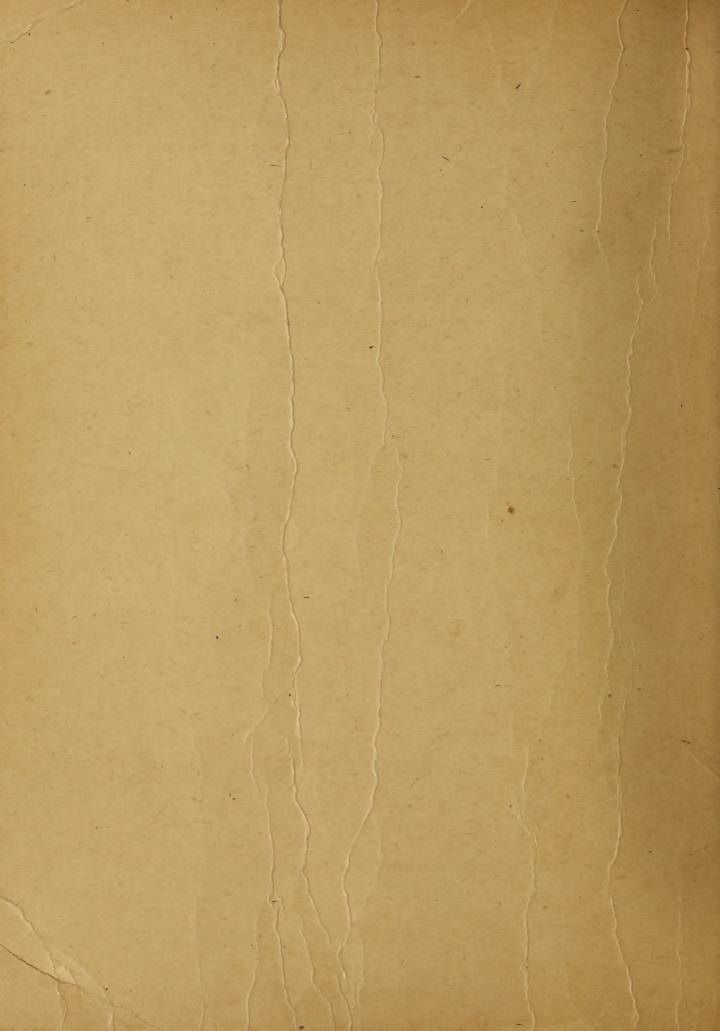


Miller

History of Benefit of Clergy in England with Special Reference to the Period between 1066 47 1377



A HISTORY OF BENEFIT OF CLERGY IN ENGLAND With Special Reference to the Period between 1066 and 1377

BY

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A. B. University of Kansas, 1910. A. M. University of Illinois, 1913.

THESIS

Submitted in Partial Fulfillment of the Requirements for the

Degree of

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IN HISTORY

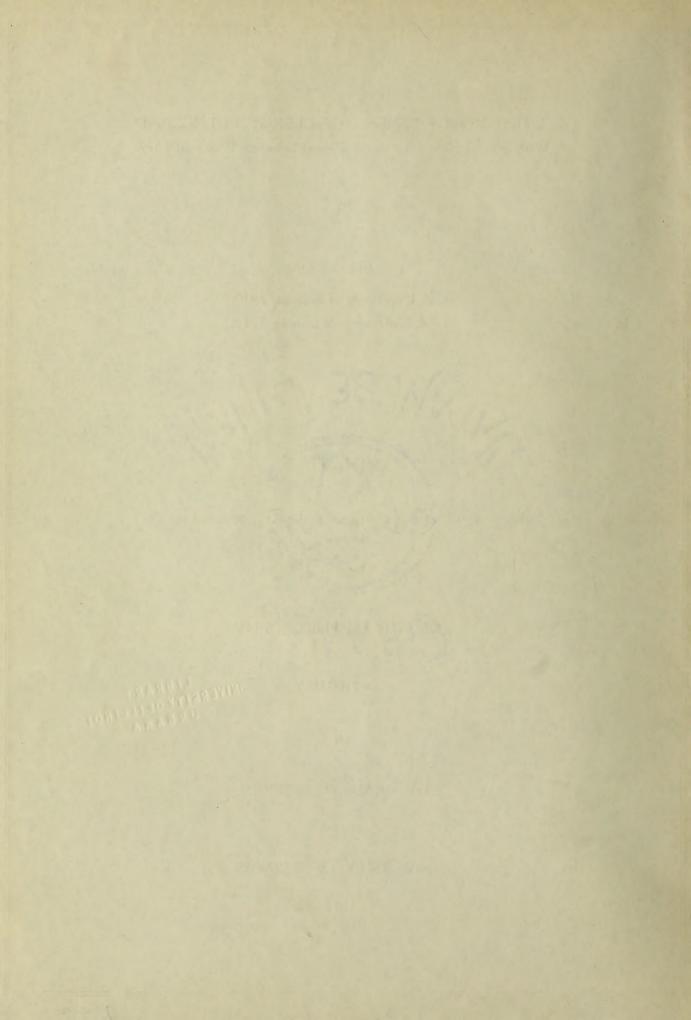
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INTRODUCTION

"Dare any of you, having a matter against another, go to law before the unjust, and not before the saints? Do ye not know that the saints shall judge the world? and if the world shall be judged by you, are ye unworthy to judge in the slightest matters? Know ye not that we shall judge the angels? how much more things that pertain to this life?" Thus wrote the Apostle Paul and upon his words the early Christians built the foundations of the claim which their successors made to immunity from the processes of secular justice.

ed that all the problems of life be settled by the standards of the faith, and the followers of the new religion, persecuted by the state, turned gladly to the church for the settlement of their material as well as their spiritual difficulties. The early Christians were but human; disputes arose among them even as among their pagan neighbors, but obeying the apostolic injunction they avoided the ordinary means of settlement and, shunning the courts of the state, they submitted their differences to the paternal arbitration of their religious superiors. As the new sect grew apace the elements of a definite procedure began to appear: minor suits were decided by the deacons and the more serious cases were reserved for the judgment of the bishop who set aside a day in each week for the determination of disputes arising among the members of his con-

I Corinthians VI, 1-3.

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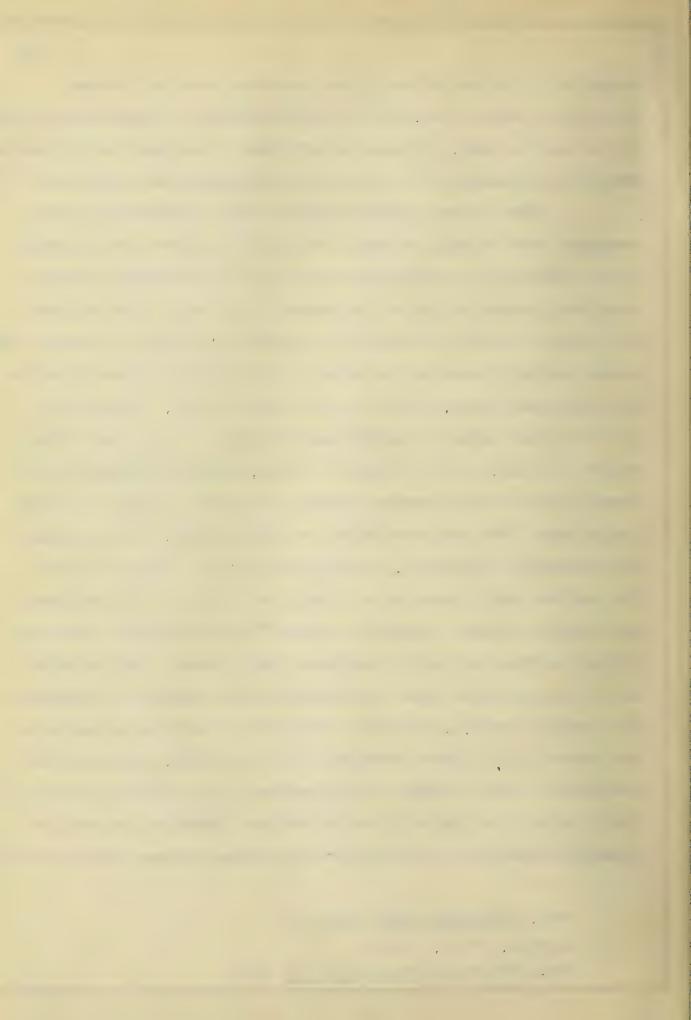
gregation.² The decisions of the churchmen were not reached through any code of law, but by the application of Christian equity, to the case in hand, but once an arbitrament was made the litigants were bound to accept or to become "a heathen man and a publican."³

With a form of ecclesiastical trial established it was necessary that it gain universal recognition before the decisions of the tribunals of the church would be of force beyond the comparatively narrow circle of believers. This was a slow and gradual process that did not reach its culmination until the church had become a mighty power in the world. Yet it made progress from almost the moment when, freed from its disabilities, Christianity took its place among the recognized religions of the great Roman empire. In 325, at the council of Nicea, Emperor Constantine refused to decide the disputes between the warring factions of bishops, saying: "God has constituted you His priests, and has given you authority to judge us, but you are not to be judged by men. For you are gods, given to us by God, and it is not fitting that man should pronounce judgment on gods."4 His successor gave this dictum the force of law by decreeing that bishops could be tried only by bishops, and from this beginning the immunity of churchmen from secular justice, sometimes restricted, sometimes expanded by the emperors, but always demanded by the councils, continued its development until the fall of the empire. At the opening of the sixth century the limits of ecclesiastical jurisdiction were not clearly defined, but a distinction had arisen between those actually

² Boyd, Ecclesiastical Edicts, 89.

³ Matthew, XVIII, 15-17.

Lea, Studies in Church History, 178.



in orders and the simple members of the church; the right of the former to certain judicial liberties was established, while the latter might appeal to the courts of the church only in particular instances and under certain conditions.

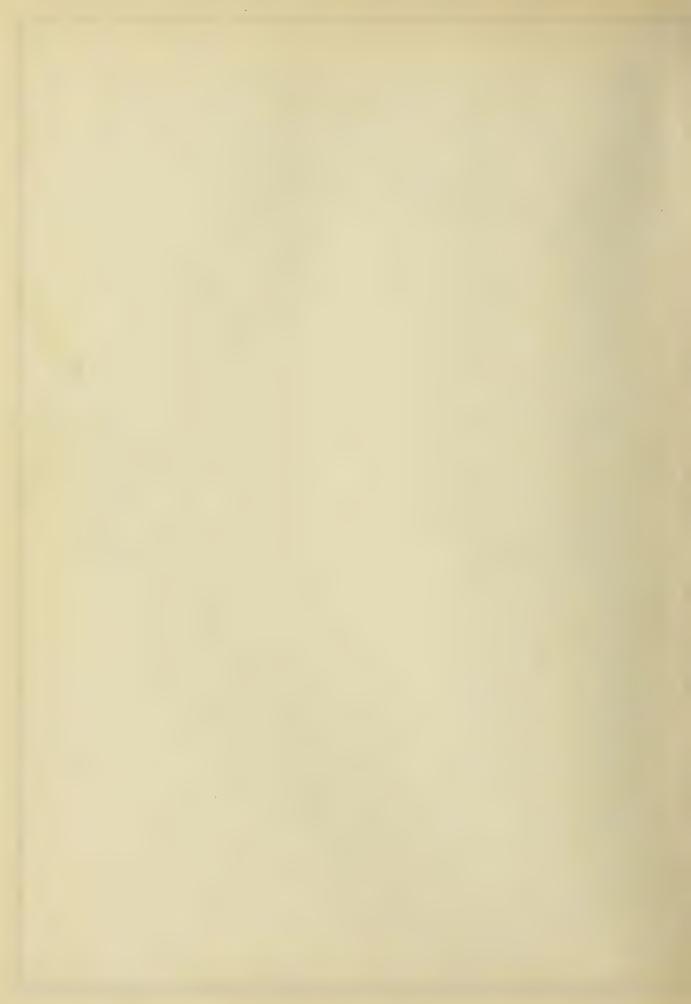
The tendency of the later empire to distinguish between the churchmen and the laity became a securely established system under the conquering Franks; their system of personal law and their respect for their newly adopted faith made it appear not only right but natural as well, that the clergy should have a law different from that of the common man. Therefore by the end of the Frankish period the persistance of the church had triumphed and ecclesiastical jurisdiction had become an accepted fact in continental Europe.

What is called benefit of clergy, the exemption enjoyed by churchmen from the criminal jurisdiction of the secular courts, was but a detail of the vast jurisdiction claimed for the ecclesiastical tribunals, for the clergy asserted that the cognizance of all cases in which the property of the church or the persons of the churchmen were involved as well as all suits arising out of the sacraments such as matrimonial and testementary causes, belonged to the ecclesiastical courts. In England the church was never admitted to the full extent of the liberties which it claimed; even benefit of clergy though often demanded in its entirety was granted only with certain restrictions: the criminous clerk was arrested by the lay power and brought before the secular court which delivered him to the church upon demand by the ecclesiastical offi-

⁵ Lea, Studies in Church History, 184.



cers. This in England was the clerical immunity at its best. It is the purpose of this monograph to trace the rise of benefit of clergy to this point and to consider the process of decline which converted it from an important and highly prized liberty of the church into a simple limitation to the severity of the English criminal law.



Chapter I

THE POSITION OF THE CLERGY IN ANGLO-SAXON ENGLAND

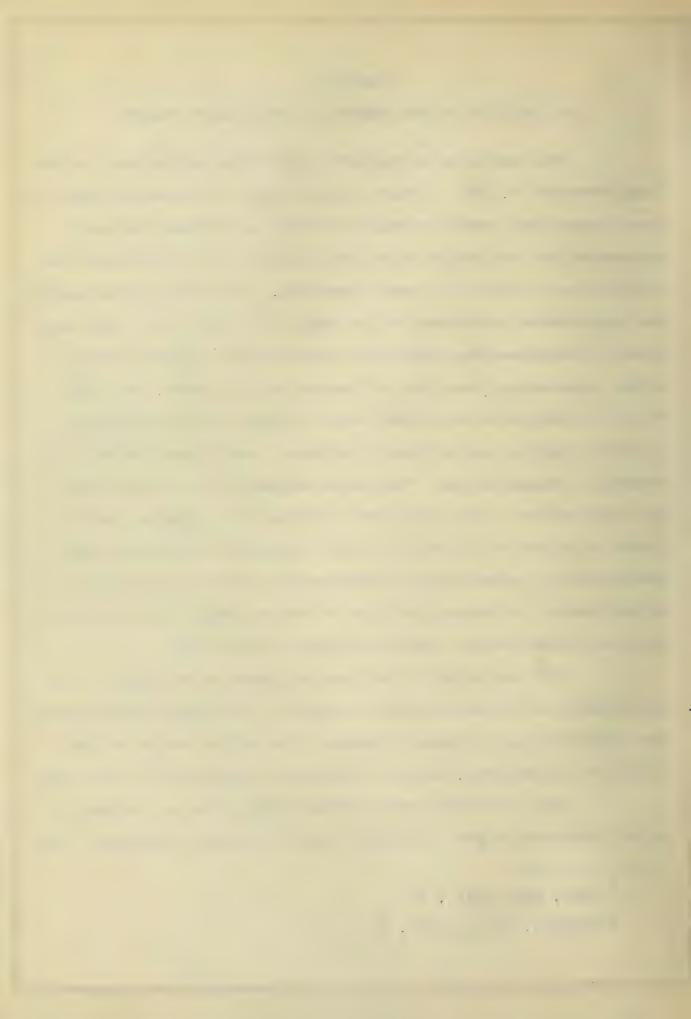
The church as an English institution may be said to date from November 17, 597. Several months earlier the mission sent by Pope Gregory had landed on English shores and worked the rapid conversion of the Kentish king and numerous of his followers; but on this day at Arles, the monk Augustine, missionary to the Angles, was consecrated archbishop of the English. Until this time the group of churchmen who had come to christianize England had no other organization than that of leader and followers, and were without relation to the state 2 save for the protection and hospitality granted them by King Ethelbert. Once Augustine was consecrated a change began. The whole machinery of the church was put into action in the territory half won from paganism, and together with the continuation of his missionary efforts the new prelate had to establish and organize the church in Kent upon a strong basis. To accomplish this it was necessary for him to depend to a great extent upon the support of the king.

This beginning in Kent may be taken as an index to the development of the early church in each of the Anglo-Saxon nations. The organizer was to become a bishop, the nation was to be the field of his endeavor, and the king was to uphold him in his work.

This situation arose without doubt from the methods by which Christianity was introduced into the various countries. The

¹ Bede, Ecc. Hist., 57.

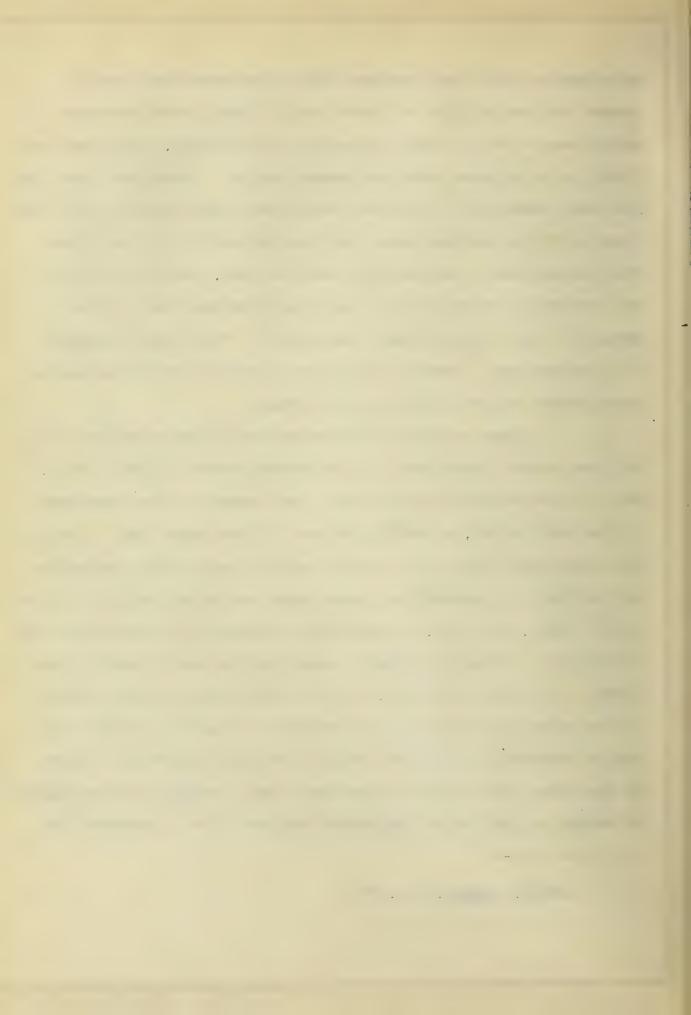
² Makower, Cons. Hist., 7.



missionaries who first appeared were adventurers who came to preach the new religion at their peril. Their best assurance of safety was to win to their cause the ruling class, which was less likely to be bigoted than the common people. Therefore, from the combined standpoint of personal safety and rapid success, the conversion of the king was made the first objective in every case. This accomplished, the nobility was won over, and with the aid and protection of the ruling class the work was then carried on among the less impressionable commoners. This early alliance with the national leaders pointed the direction which the Anglo-Saxon church was to follow in the future.

In each country the introduction of Christianity was followed almost immediately by the establishment of the bishop, who at once stepped into the place left vacant by the overthrow of the high priest, a leading advisor of the pagan king. During the missionary period the bishops were in large part foreigners; but as the first generation passes away the Saxon takes the place of the Roman, the Celt, or the Frank in carrying forward the work of religion. These new leaders came from the most powerful families of the Saxon nobility, and once they were in high position in the church the king did not hesitate to make use of their superior learning in his most intimate and most important affairs. On the other hand the noble prelates gladly seized the opportunity to assume a position in the state that would be of greatest aid

³ Kemble, Saxons, II., 360.



to them in advancing the interest of their religion. This association of the nobility with both spiritual and temporal affairs did much to prevent the growth of a clerical caste and marks another step in the alliance of church and state.

Almost simultaneously with the introduction of Christianity there appeared another innovation in Anglo-Saxon life, the written law. Within a decade after the coming of the missionaries King Ethelbert of Kent issued the first known code of English law, a series of ninety short paragraphs which set forth the customary law then existing in his dominions, and which dealt principally with the composition to be made for the various personal injuries. It is not clear how Ethelbert's law was enforced; but the next written code, that of Hlothar and Edric, some seventy years later mentions the bringing of suits before the "methel" or "thing" and the laws of Withred speak of the gemot as an assembly of the wise men, ecclesiastical and lay, "in unison with the obedient people." Without doubt such assemblies enforcing a customary law were found by the first missionaries to the Anglo-Saxon states. As has been said, the idea of litigation in the secular courts was repugnant to early Christianity. 8 From its beginning

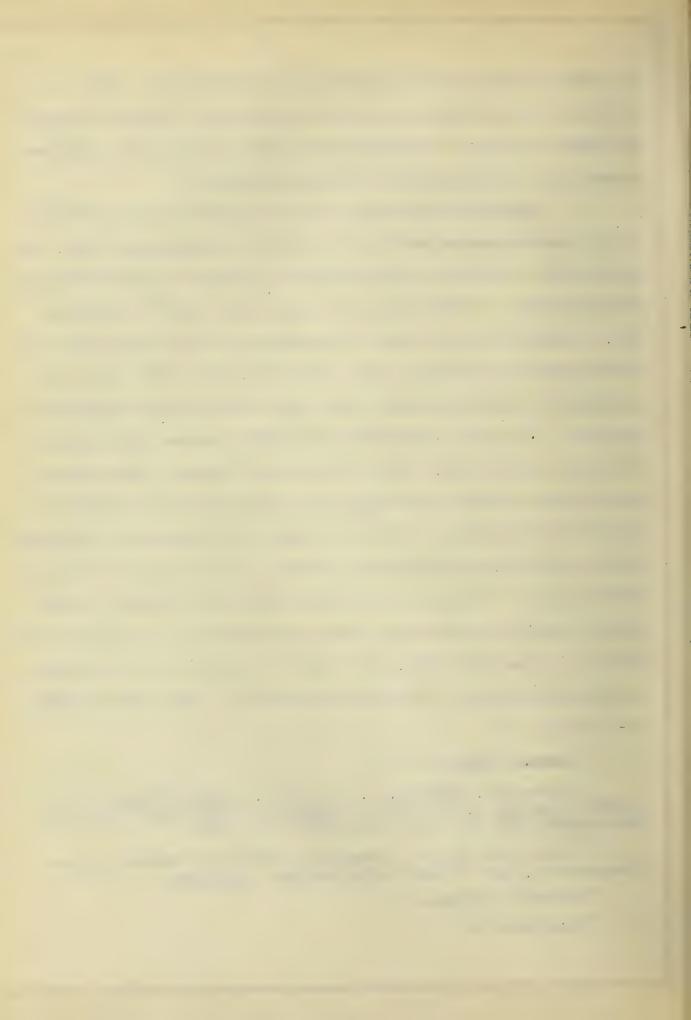
⁴ Kemble, Saxons, II, 373.

⁵ Liebermann, Gesetze, I, 3; Thorpe, Ancient Laws, I, 2; Johnson, Canons, I, 1; Wilkins, Leges, 2. Liebermann fixes the date between 601 and 604; Thorpe sets it at 602.

Hloth. and Edr., 8. Liebermann translates "methel" Volk-sversammlung, and "thing" Gerichtsdinge. Gesetze, I, 10.

⁷ Withr., Prologue.

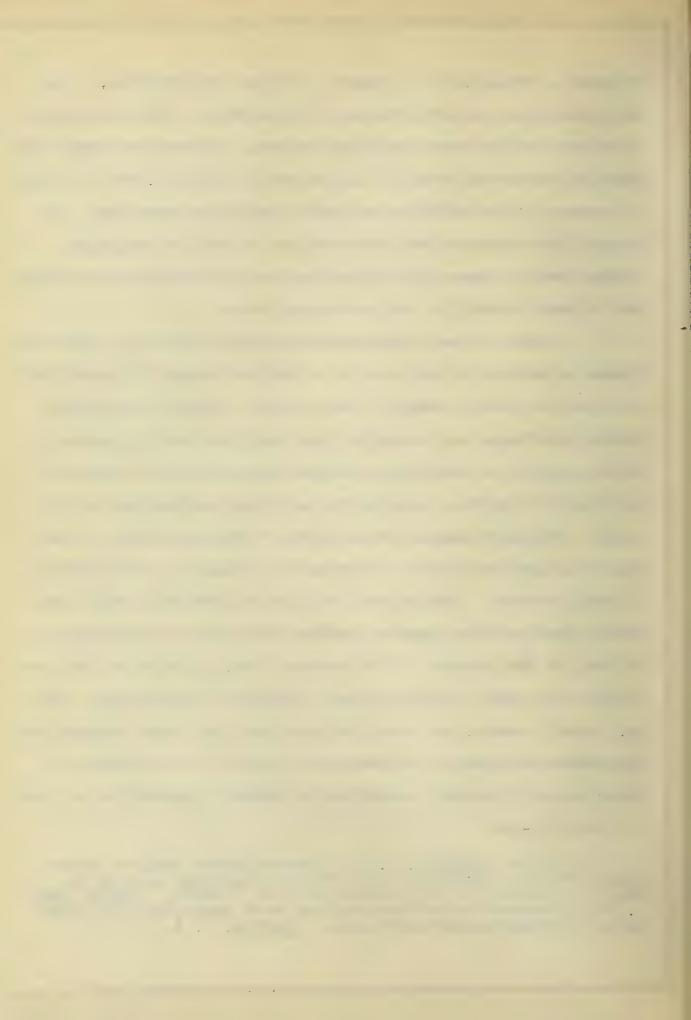
⁸ See Introduction



it waged a struggle for a separate justice for churchmen, a justice based upon the arbitration of the bishops. This idea found acceptance in the Greek and Roman empires. In western Europe the invading barbarians found it and adopted it in part, but limiting it because of the existence of their purely customary law. In England the situation was different for it was the Christian rather than the pagan who entered upon an old civilization and who had to adapt himself to the conditions there.

From the very beginning the English churchmen took their places as members of the state on a similar though not equal footing with the other classes of the nation. Respect and certain social privileges were accorded them from the first by reason of their position as the representatives of God and the church; but politically they were expected to meet their obligations as citizens. The first chapter of the laws of Ethelbert helps to explain the position of the church and the clergy at the beginning of their history. The respect felt for the church is made apparent by the penalties assessed against the theft of its property or that of its members. It is evident that, in spite of its missionary character, it already had a complete organization. Bishop, priest, deacon, and clerk are mentioned and their comparative importance is shown by the penalties imposed for violation of their property rights. According to Wilkins' translation of the

Wilkins, Concilia, I, 29. Thorpe argues that the vacant space after the initial letter of the uncompleted word is too small to justify the termination given by Wilkins. Ancient Laws, I, 2. Liebermann makes the completed word Maethlfrip and translates it Volksversammlungsfrieden. Gesetze, I, 3.



document, the monastery is given legal recognition, and Thorpe would have it appear that one of the most jealously guarded of church privileges, the right of sanctuary and protection to those within its walls, is recognized by providing a fine for its breach. 10

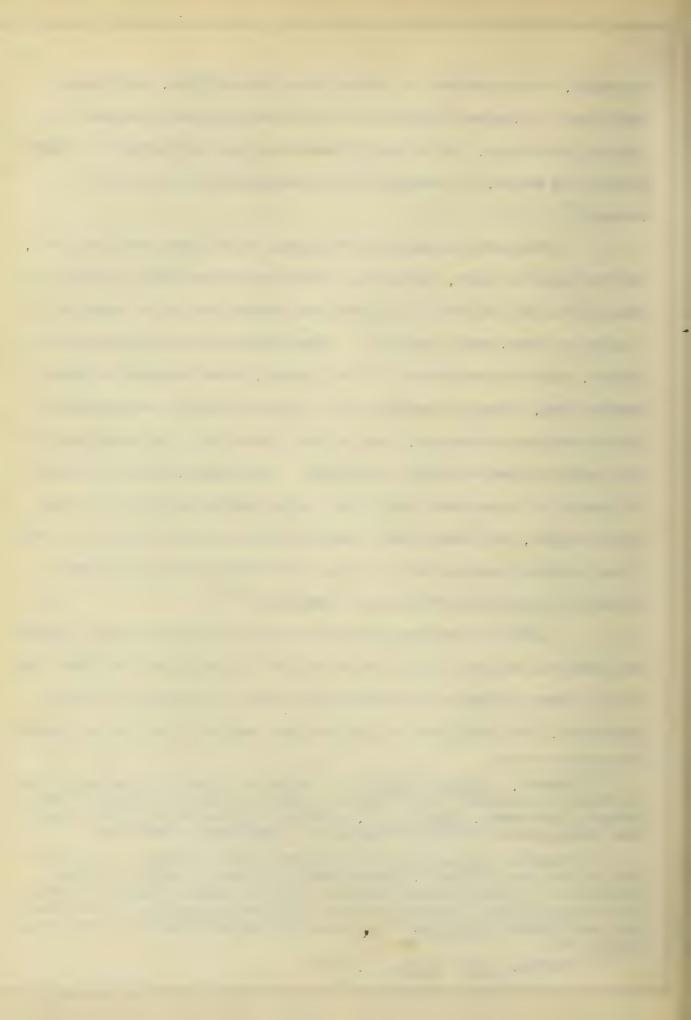
The early relations of England with Rome were few and, for the greater part, pleasant. Popes sometimes sent letters of admonition and censure to rulers, and these the kings accepted in a more or less humble spirit. The reforms made by Theodore of Tarsus, the representative of the papacy, were accepted without protest and, though changes in the system which he established were sometimes attempted, they either lived with the sanction of the pope or died with the innovator. The clergy, due to the development of a national character, paid little attention to the papal canons, and Rome seemed indifferent to their attitude. For three hundred years after the time of Theodore there was practically no papal interference in England. 12

Left to develop without outside interference the church followed the course it had taken in the beginning and entered into such a close alliance with the state that, in matters of administration, the functions of the two can scarcely be distinguished.

Thorpe, Ancient Laws, I, 1, note c. The word church-frith to which he ascribes this meaning means simply the peace of the church Liebermann, Gesetze, I,3. This is borne out by the numerous laws against drawing weapons and fighting in churches.

¹¹ Makower, Cons. Hist., 8. The best known example is the letter of the papal legate, Archbishop Boniface of Metz, to King Ethelbald of Mercia reproving him for the example which he gave his people by his immoral conduct. Wilkins, Concilia, I, 87; Haddan and Stubbs Councils, III, 350. The reproof was well received. Ibid., 350.

Stubbs, Cons. Hist., I, 267.



Because of this union whatever privileges or immunities were held by the church must be regarded in connection with the position of the prelates and clergy, not as members of a separate and almost alien class, but rather as active and influential citizens of the state.

The parish priest was often a married man¹³ who derived the greater part of his income from the cultivation of his land. Yet though he lived the life of his people he stood high in the social scale. Holy orders conferred upon him a sort of nobility. In the township affairs he played a leading part and he accompanied the reeve and four best men to the meetings of the local moots. At his home he was the supervisor of the most important and yet most ordinary things of life. Marriage required his benediction, he witnessed the wills of the dying, he made binding

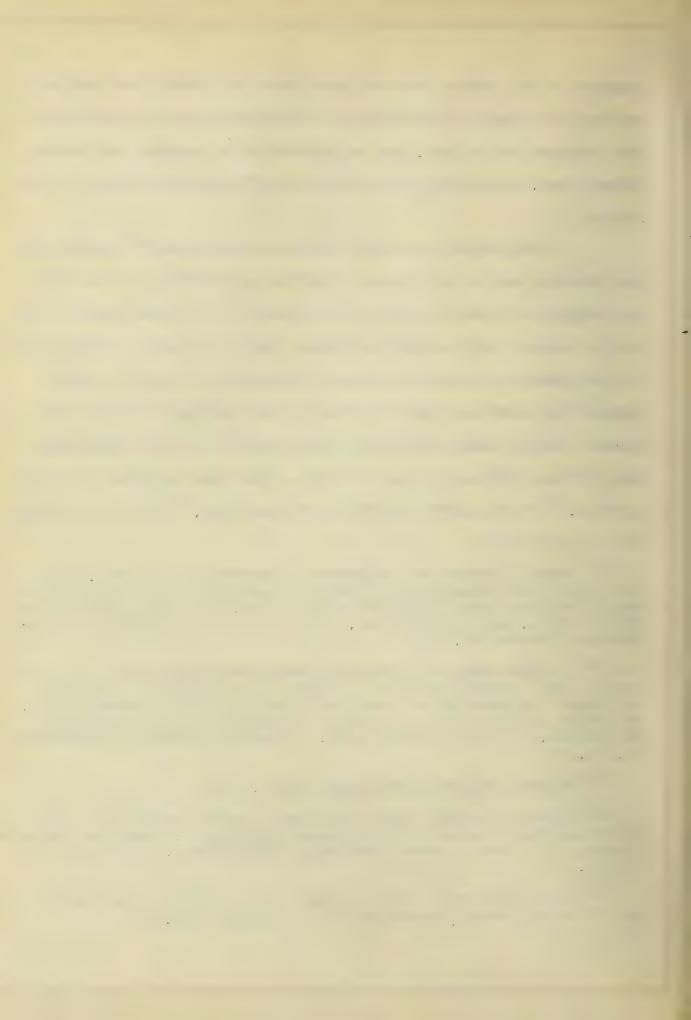
[&]quot;Men in orders are sometimes deceived by the devil, that they marry unrighteously and foredo themselves by the adultery in which they continue." Institutes of Polity, 23. "If a priest forsake a woman, and take another, then let him be anathema." Northumbrian Priests Law, 35.

In some cases he entered so completely into the life of the people that scandal resulted. Egbert of York found it necessary to forbid the priests to importune others to drink. Excerp. Egb., 14. Edgar enjoins them to be sober at wakes, not to be alescops or gleemen, and not to hunt, hawk, or gamble. Canons of King Edgar, 28, 58, 64.

¹⁵ Pollock and Maitland, Eng. Law. I, 34.

of betrothing a woman. 8(Liebermann, Gesetze, I, 443). But priests should not attend a second marriage. Excerp. Egb., 89; Canons of Alfric, 9.

The priest was to take others with him "lest the kindred out of covetousness contradict him." Dialog. Egb., 2.



the sales of land and chattels, 18 he cared for the poor 19 and was the friend of the slave, and, in each of these capacities he served as God's representative.

The superiority of the clergy to the ordinary citizen was recognized throughout the whole Anglo-Saxon law. The clerk was the scholar who "through learning thrived so that he received holy orders and served Christ" and who held the high place that rightfully belonged to those orders "unless he should misdo, so that he those orders' ministry might not minister."20 He was under the especial protection of the king and if he was injured by word or deed, it was for the king and the bishop to see that justice was done him. 21 The laws of Cnut place the king in the position of kinsman to the ecclesiastic who is wronged as to money or life, bound, beaten, or insulted in any way. The wrongdoer must make "bot" 22 to both the injured man and the king or suffer heavy penalty "for it belongs to a Christian king that he avenge God's anger very deeply, according as the deed may be."23 If the clerk is murdered and the "bot" is not made within thirty days. the criminal becomes an outlaw and forfeits all his possessions. 24

¹⁸ II Athel., 10; III Edm., 5.

¹⁹ Canons of King Edgar, 57.

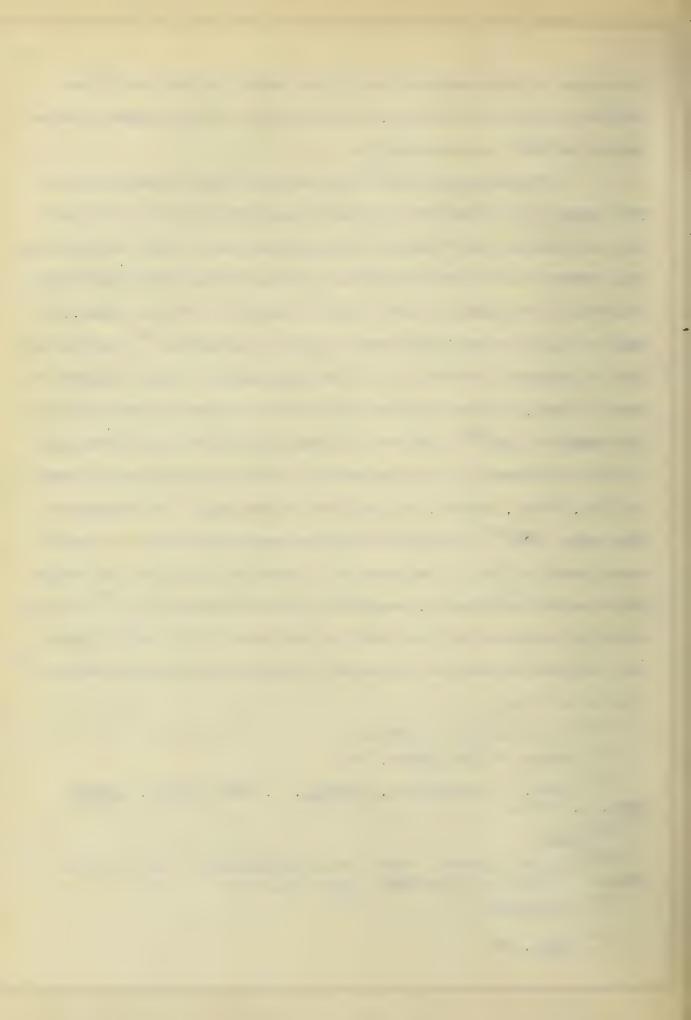
Ranks, 7 (Liebermann, Gesetze, I, 459; Thorpe, Ancient Laws, I, 193).

²¹ Ibid.

²² Bot is a general term for any compensation made for an offense. Pollock and Maitland, Eng. Law, 49.

²³ II Cnut, 40.

^{24 &}lt;u>Ibid</u>., 39.



In the early day the clerk accused of crime cleared himself by his own oath, while four men of the same order stood by: 25 but if he had taken holy orders and was a deacon or a priest, no compurgators were required. 26 Thus the priest's oath was to have the same value as the thegn's, because by the seven orders he had taken he was worthy of "thegn right."27 Later a distinction was made in the degree of the offense. A priest who lived canonically might celebrate mass, and then by his unsupported oath, taken on the housel. clear himself in a simple offense. If the accusation were triple however, he had to be supported by two compurgators. If he did not live canonically he was required to bring compurgators in the first instance. If he was a stranger. he was obliged to go to the ordeal of the corsnaed. If the charge was homicide, even the priest had to rely upon the kindred, and the kinless had to submit to the judgment of the ordeal. 28 The distinction between priest and deacon was recognized by requiring the latter to appear with two compurgators for simple accusations and with six compurgators if the accusation was triple. 29 The social equality of the mass-priest with the thegn is further borne out by the fact that their "wer" was assessed at the same amount.

²⁵ Withr., 19.

^{26 &}quot;Let the priest clear himself by his own sooth, in his holy garments before the altar, saying, 'Veritatem dico in Christo, non mentior.' In like manner let a deacon clear himself." Withr., 18.

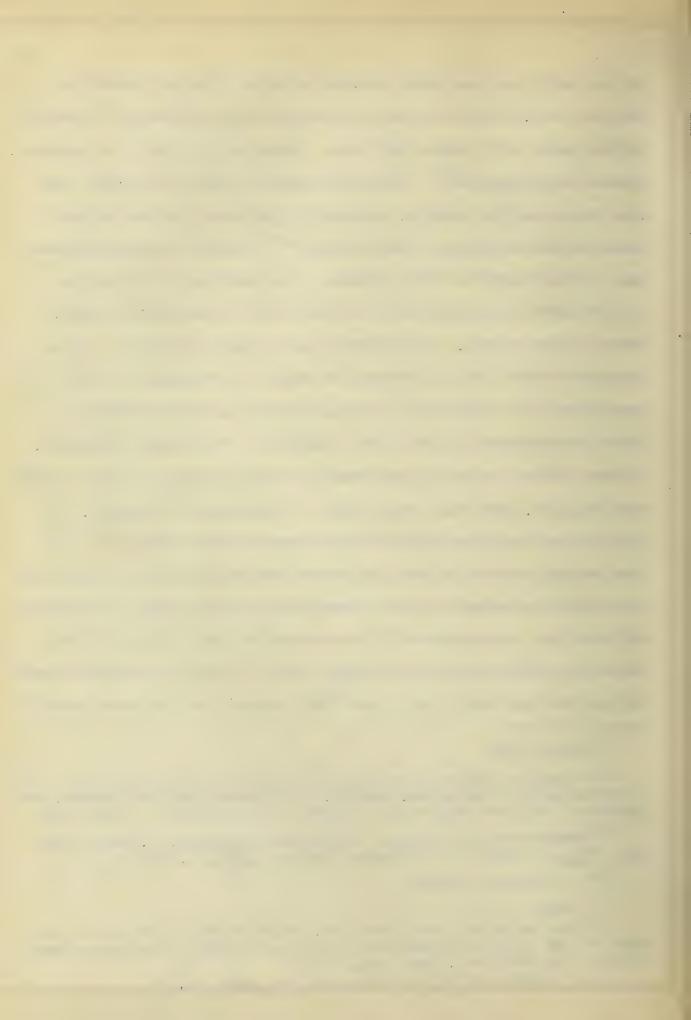
²⁷ Eideswerth des Thegn (Liebermann, Gesetze, I, 465); Hadbot (Ibid.); Oaths, 12 (Thorpe, Ancient Laws, I, 183).

²⁸ VIII Ethel., 19-24.

²⁹ Ibid.

³⁰ The value set upon his life, which might be used as a measure of the offense committed as well as of the injury sustained. Pollock and Maitland, Eng. Law, I, 48.

31 V Ethel., 9; VIII Ethel., 28; Leg. Hen. 68. 3.



If the priest was guilty of irregularities, his position was to decline according to the greatness of his offense. 32

The position of the bishop was very similar to that of the lower clergy. It differed only in the way that the position of the great noble differed from that of the thegn. The wer of the bishop was the same as that of an ealdorman. 33 In a suit his word like that of the king stood uncontrovertable without oath. 34 As regards the state, the bishops were national leaders rather than independent rulers as were so many of their continental brethren. In return for the support of the crown to the church they returned faithful service as officers of the national administration. Not closely bound by canon law, we find them as leaders of the national armies 35 and judges of the national courts. It may have been the indifference toward the central power of the church that led to the uncertainty of practice in matters of episcopal appointment. There are several instances in which bishops were elected but it appears that by far the greater number were appointed by the king with the advice and consent of the witan. 36

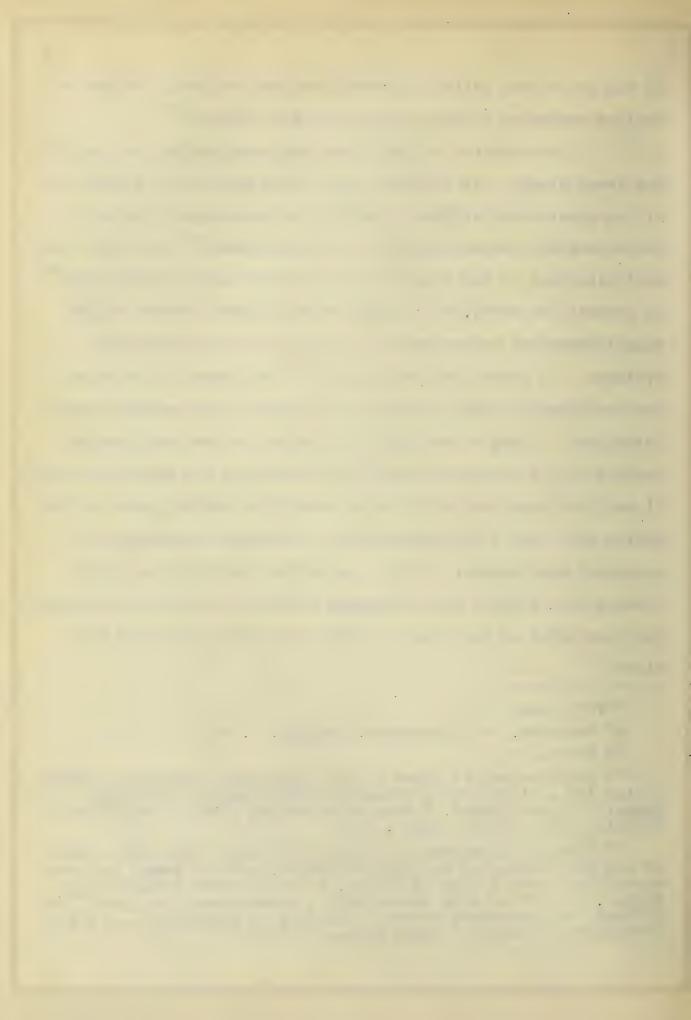
³² VIII Ethel., 29.

³³ Wergilds, 3 (Liebermann, Gesetze, I, 461.)

³⁴ Withr., 16.

³⁵ Examples may be found in the Anglo-Saxon Chronicle. Bishop Elstan led a victorious army against the Danes in 845. Saxon Chron., II, 55. Eldred, bishop of Worcester, aided in repelling an invasion from Ireland. Ibid., 142.

of the Holy Church of the English nation, sent to Rome, for consecration to the office of bishop, a priest named Wihard." Flor. Wig., I, 28. "Then king Edward held a witena-gemot in London, at Midlent, and appointed Robert archbishop of Canterbury and Abbot Spearhafoc to London." Saxon Chron., II, 142.

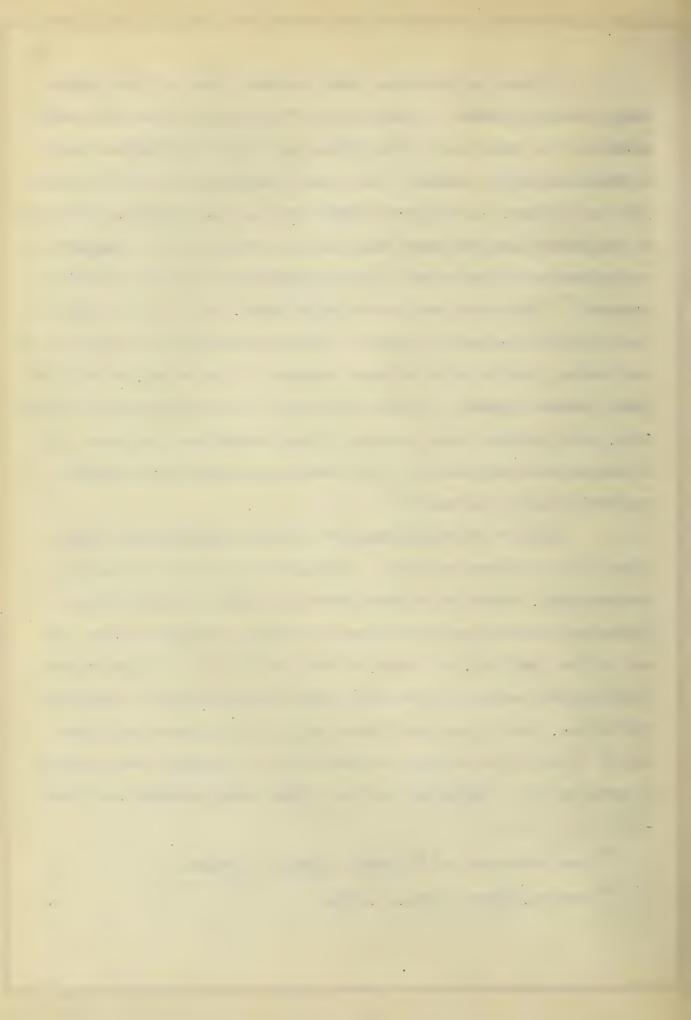


Saxon clergy appears. In this body of advisors to the king were gathered the chief men of the state; and the ecclesiastics were as numerous as the laymen. The witan enacted the law of the land and the bishops, as the most learned men in the kingdom, took part. On the other hand the same body made the rules for the conduct of ecclesiastical affairs and for the government of ecclesiastical persons. The witan was also a high court, and in this capacity the whole body acted as judges in cases concerning the property of the church, and in suits between members of the clergy as well as those between laymen. On the continent, and in England at a later date, such matters were reserved to ecclesiastical judgment, but in Anglo-Saxon England the line between spiritual and temporal was "very lightly drawn."

tions of the church councils. Although the bishops and abbots predominated, there is no doubt that the king and the leading nobles were often present at these meetings and had a voice, if not in the drafting, at least in the ratification of the canons. The business carried on was of a purely ecclesiastical character. The duties, activities, and dress of the clergy were regulated, and at times suits between ecclesiastics or churches were settled by arbitration. Decisions in the latter case received the force

³⁷ See prologues of II Cnut, I Edgar, V Ethel.

³⁸ Stubbs, Cons. Hist., I, 144.



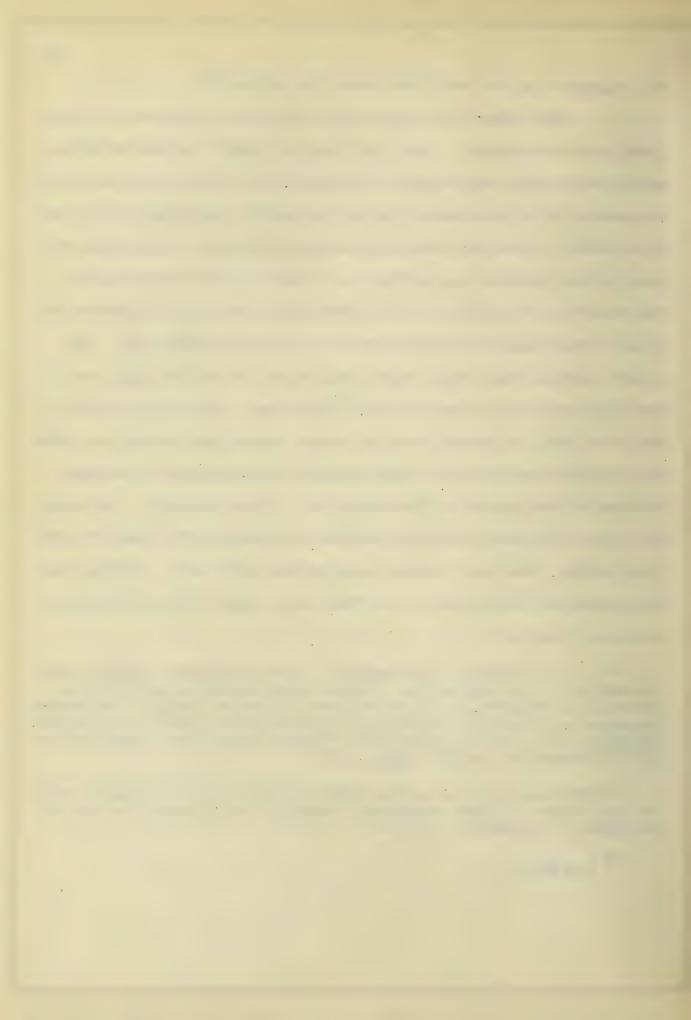
of judgments by the ratification of the witan. 39

The bishop also had a place of great importance in the local administration. Since the time of Edgar 40 he sat with the ealdorman in the semi-annual shire moot, and helped preside either in person or by representative in the monthly meetings of the hundred moot. It was in these courts that the mass of judicial business of the kingdom was carried on. The idea that the king was the fountain of justice did not develop in the earlier period and even at the time of the conquest was far from perfection. The king's justice was administered only when the suitor could not get justice in the lower courts. 41 and then it was administered by the witan. So aside from the select cases over which the witan or the synod had original jurisdiction, all matters of law were settled in the courts of the shire and of the hundred. The greater number of cases that were decided by these courts were of criminal nature, the most common being murder and theft. Treason was also known at this time and in fact had a more certain definition

³⁹ At the council of Clovesho in 747 Ethelbald of Mercia was present with the lay nobles. Canons were passed concerning the learning of priests, their attendance to parish duties, drunkeness, the wearing of secular apparel by priests, etc. Haddan and Stubbs, Councils, III, 360 ff. King Offa of Mercia signs the legatine canons at Celchyth in 785. Ibid., 447.

⁴⁰ III Edg., 5. This is the first mention of the bishop sitting in the courts. Alfred assesses a penalty for fighting before an ealdorman in a gemot. Alf., 38.

⁴¹ III Edg., 2.



than in the early Norman period. 42 Perjury, 43 adultery, 44 failure to keep fast days 45 and many other matters afterward recognized as within the jurisdiction of the ecclesiastical court were presented for judgment, as well as cases of a purely secular nature. The penalty assessed for all offenses was generally a money fine depending in amount upon the system of customary compositions that had been sanctioned by the king and witan. There were few offenses so grave that they merited death, and imprisonment seldom appears save where necessary to secure the payment of the "bōt," a matter in which difficulty sometimes arose, because of the support lent to offenders by the powerful lords. 46

and both expounded the same law, 47 that of the witan, whether the matter under consideration was of secular or ecclesiastical nature and it is probable that in either case the better learned bishop was the more influential of the two officials. Trials is all cases were conducted either by compurgation or by ordeal; here again the bishop played a leading part. One of the especial reasons for his presence seems to be the particular sanctity of oaths taken before him 48 and the need that God's representative be in

⁴² Alf., 4.

⁴³ II Athel., 10, 1; II Cnut, 37.

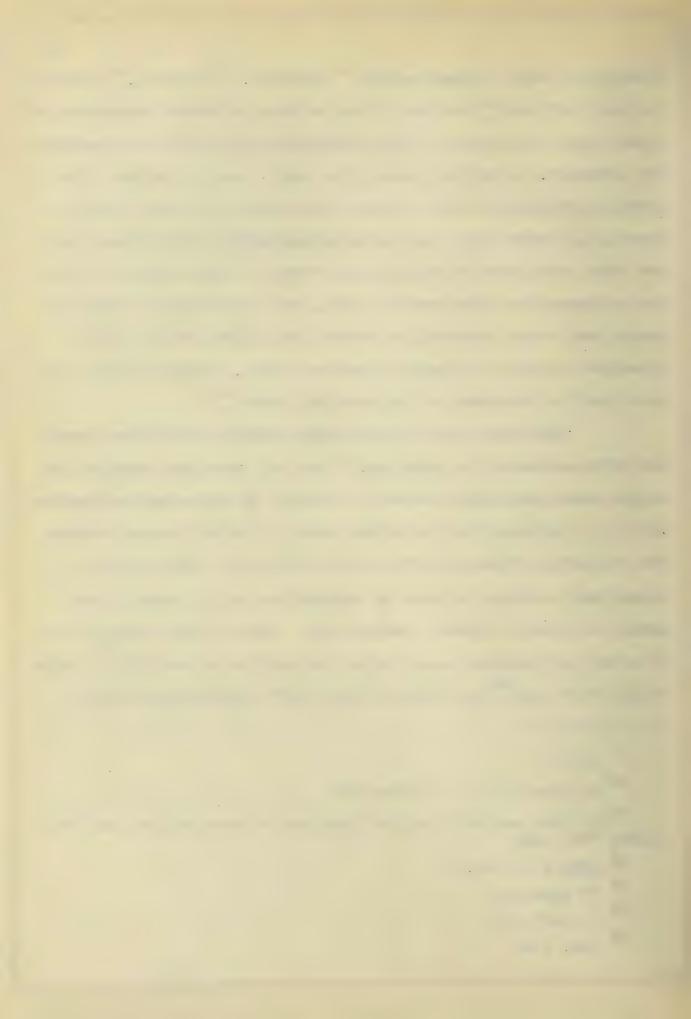
By Edw. and Guth., 4, the king was to have the man and the bishop the woman.

⁴⁵ Ibid., 8; Ine, 3.

⁴⁶ II Athel., 3.

⁴⁷ II Cnut, 18.

⁴⁸ Ine, 13.



charge of the ordeal, by which the result of His judgment was made known to men. The ceremonies of the ordeal were formal and distinctly religious; the appeal to God for judgment, the sprinkling of the accused with holy water, and blessing of the iron or the water by which the trial was to be made, all required the presence of the churchman. Other matters laid to the particular charge of the bishop were the protection of clerks and strangers, the guarding against unjust measures, 51 and the enforcing of fines levied against secular officers for failure to do justice. This last duty shows clearly the superior position of the churchman in national administration.

The authority of the bishop did not end with his work in the public courts, for he often had a private jurisdiction 53 in which he administered the law of the land in his own right. These grants of immunity were more commonly made to the heads of monastic houses than to secular ecclesiastics, and their scope is a matter of dispute. There also existed outside the national law, a wide spiritual jurisdiction: the penitential discipline which was exercised by the church over the laity as well as over the clergy. This power cannot be spoken of as truly judicial; it

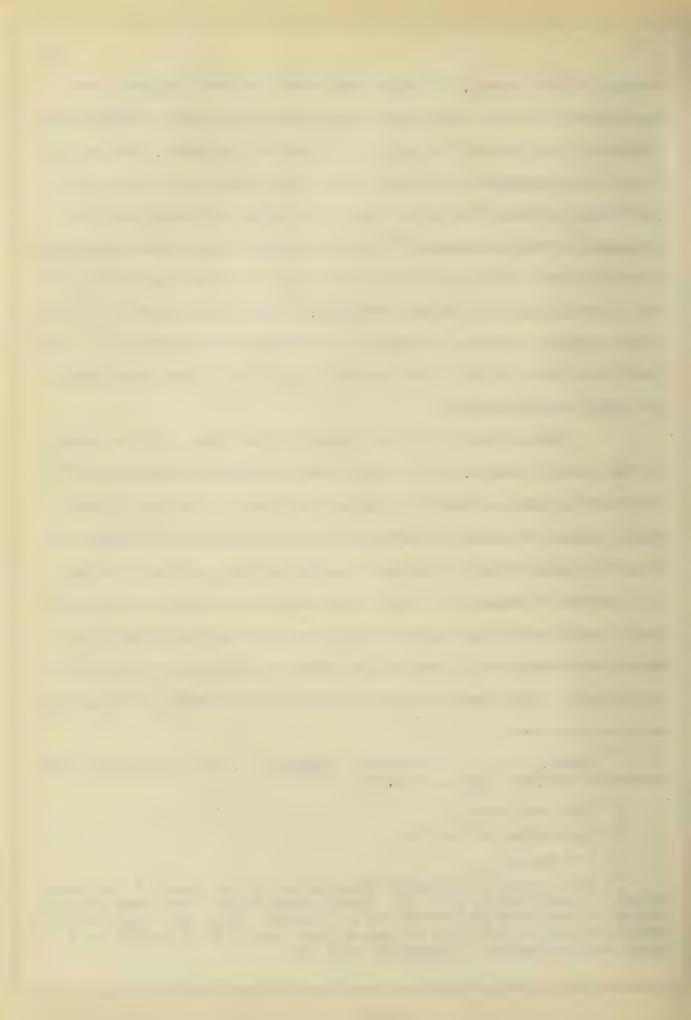
⁴⁹ Ordal, 1 - 6 (Liebermann, Gesetze, I, 386). Note also the numerous rituals. Ibid., 401-429.

⁵⁰ Edw. and Guth., 12.

⁵¹ Institutes of Polity, 7.

⁵² III Edg., 3.

That private jurisdictions existed at the time of the conquest is admitted by all; Mr. Henry Adams holds that they originated in the time of Edward the Confessor, (Ang. Sax. Law, 27 ff.) while Professor Maitland believes that they can be traced to a much earlier period. (Doomsday, 258 ff.).



was rather the authority vested in priest as well as in bishop for the punishment of offenses revealed in the confessional. Yet even the penitentals had a bearing on the national law, for a lighter penance was enjoined upon offenders who had been punished by the state than upon those who had escaped. ⁵⁴ Between penitential discipline and the activities of the popular courts there was still another sort of ecclesiastical jurisdiction, vested in the person of the bishop and exercised by him either in camera or in itinere. ⁵⁵ This jurisdiction took account of matters between clerks and of certain moral offenses such as adultery, ⁵⁶ perjury, ⁵⁷ and heresy. ⁵⁸ But even here the state might play a part; for if the offense was grave enough to merit excommunication the culprit was placed on the same footing as the temporal outlaw. ⁵⁹ In the case of lesser offenses the influence of the secular law appears in the assessment of fiscal penalties.

relation between the anglo-Saxon church and the state becomes apparent. The higher churchmen, holding their places by royal appointment sat in the lay councils and courts of the nation; they tolerated the presence of the temporal power in their ecclesiastical

Penitental of Theodore, lib. I, chap. 3, sec. 3; Dialog. Egb., 12.

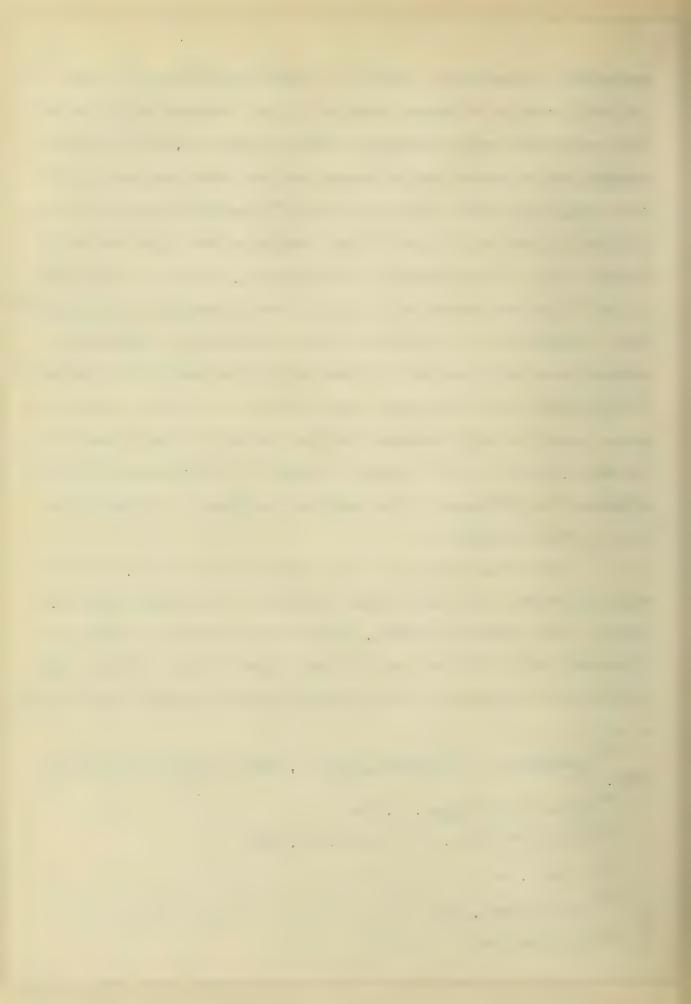
⁵⁵ Ecc. Courts Comm., I. 24.

⁵⁶ Edw. and Guth., 4; II Cnut, 54, 55.

⁵⁷ I Cnut, 5.

VIII Ethel. 41.

⁵⁹ II Cnut. 67.



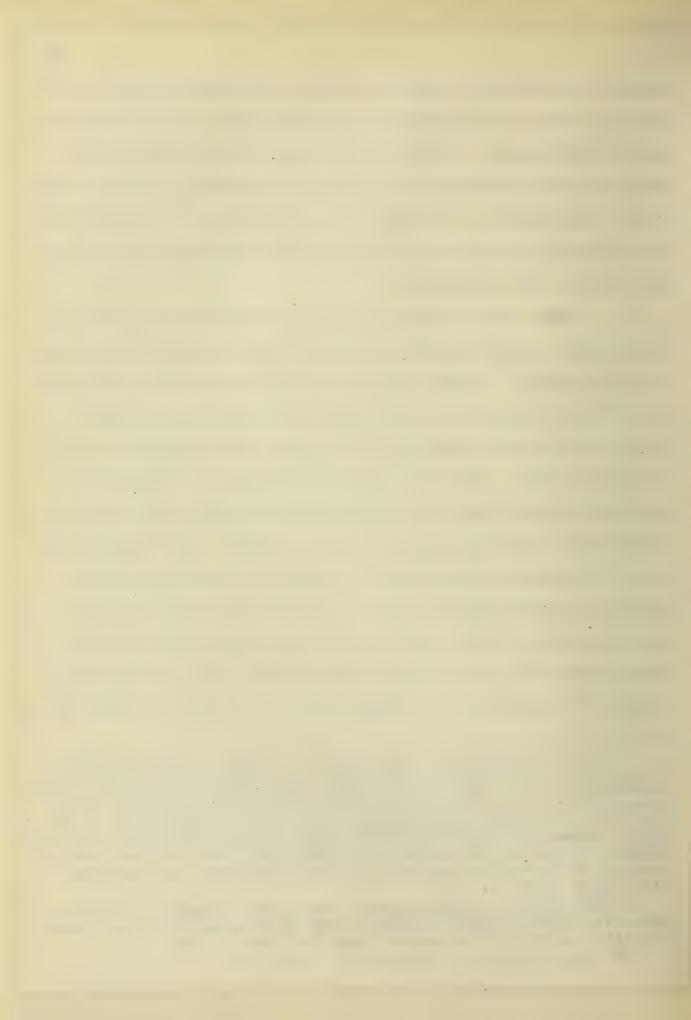
synods and welcomed the added authority given their decrees by its sanction; they did not protest when laymen took a hand in the making and enforcement of ecclesiastical law, and they were glad to make use of the machinery of the church to enforce the laws of the state. The balance of influence was on the side of the church and the churchmen accepted the situation without demanding that it be put down in black and white.

Under these conditions it is not strange that there is little trace of the benefit of clergy in the documents of the Anglo-Saxon period. Though there is no case of a contest over the point and though the few existing trial records do not show a single claim to the privilege, it is clear that the germs of the practice existed. The favor shown to churchmen in the matter of oath and of "wer" point in that direction by showing the national respect for the clergy and the clerical office. The frequent mention of the right of sanctuary is evidence of the veneration in which the church itself was held. To drag a man from sanctuary was a violation of the peace of the church and an insult to God Himself which the various kings forbade under more or less heavy penalty. The benefit of clergy stood on a different plane; it

Several instances of the exile of members of the higher clergy are related by the chroniclers and there is one case of imprisonment: in 952 King Edred "commanded Archbishop Wulfstan to be brought into the fastness of Jedburgh, because he had been often accused to the king." Saxon Chron. II, 91. He was released in 954. Ibid. Malmesbury sets the date at 946 and says that Edred kept the prelate in chains for conniving at rebellion, but "at last, out of respect for his ecclesiastical dignity he released and pardoned him." Gest. Reg., I, 162.

⁶¹ The Mirror of Justices says that Alfred "hanged Alflet because he judged a clerk to death, over whom he had not cognizance;" but this is doubtful evidence. Chap. 5., sec. 1, 108.

⁶² Alf., 5; Ine, 5; IV Ethel., 6; I Cnut, 2.

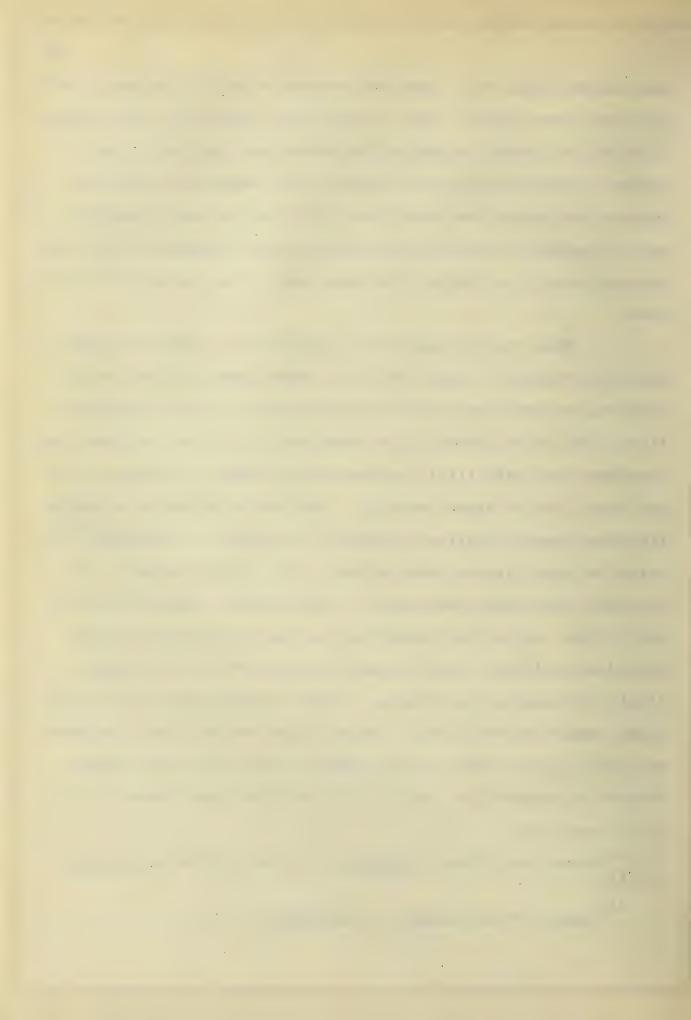


was the privilege of a class and therefore not in conformity with the Anglo-Saxon idea of law. As has been pointed out, the clergy, high and low, were citizens of the state, and they held their places in the nation as individuals. The immunities that were granted the clergy came as a free gift from the king, possibly a mark of respect to their divine calling, but certainly not as the recognition of the rights of a class apart from the mass of citizens.

When the writings of the Anglo-Saxon clergy are drawn upon for evidence of their attitude toward immunity from secular justice, the positive evidence is very scarce. When the activities of the church councils are examined it must be concluded that churchmen were very little interested in benefit of clergy or in any other form of class immunity. The single reference to exemption from secular justice is made at the council of Celchyth at which two papal legates were present. The legates seem to have presented the canons ready-made to the English, received the assent of the king of Northumberland and the ecclesiastics assembled, then continued their journey to the court of Offa where a similar proceeding took place. In these canons the claim of complete exemption from secular jurisdiction was made, and the argument that priests were called angels by the Master was brought forward to support the claim. 64 In one other case there is a

Haddan and Stubbs, Councils, III, 447; Wilkins, Concilia, I, 145.

Canons of the Council at Celchyth, 11.



canon against secular jurisdiction. This occurs in the laws of the Northumbrian priests, wherein a penalty is imposed on clerks who appeal to other than their bishop for justice. 65 This case is not in point however as the evidence shows that the code was neither the work of a synod nor of a bishop, but of one of the conquering Danish kings. 66 In the writings of the English churchmen the claim to a right of exemption from the criminal justice of the secular power is absent. Archbishop Egbert of York asserts that cases arising in the church should not be settled outside of the church, but adds that in criminal matters guilty churchmen should be seized and punished by the lay power unless the church is willing to make satisfaction for them. 67 It is evident also that the archbishop was not a humanitarian, for he advises, on the authority of St. Jerome, that the execution of murderers is not the shedding of blood but the administration of law, and that to spare the guilty is to wrong the innocent. 68

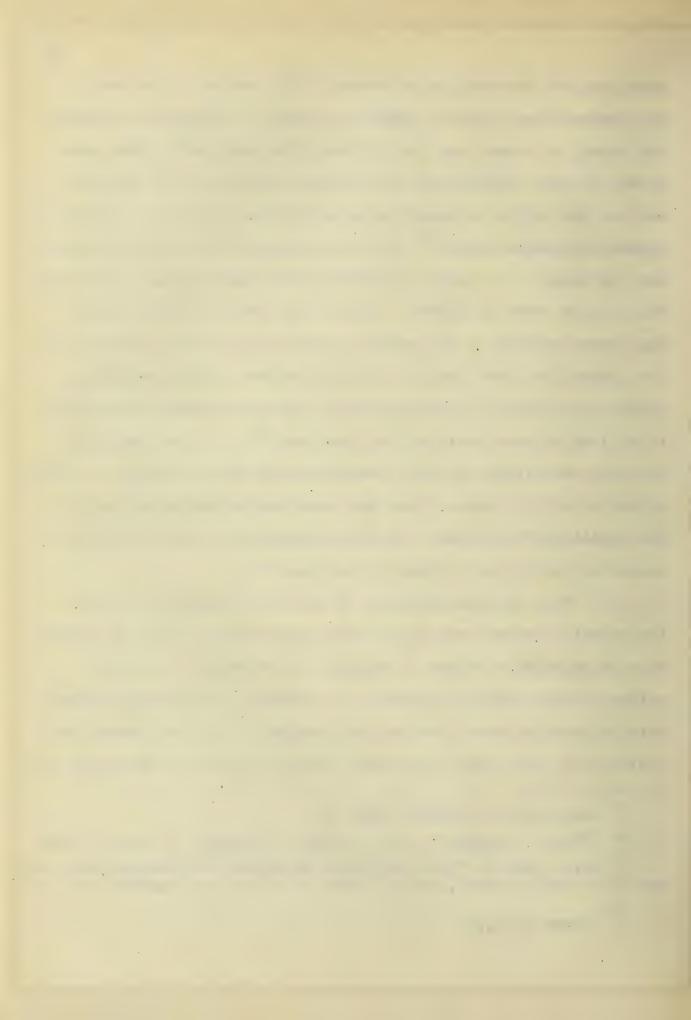
With this indifference to clerical immunity in view, the question arises: why did not the Anglo-Saxon clergy as a whole make an aggressive effort to obtain this privilege so highly prized in later English history. To answer, it is simply necessary to recapitulate: the national character of the church, the position of the clergy, the scant attention given to the canon law,

⁶⁵ Northumbrian Priests' Law, 5.

⁶⁶ Johnson, Canons, I, 371; Wilkins, Concilia, I, 221-2, note.

⁶⁷ Dial. Egb., 8. "That no priest be surety for another man, nor sue in a secular court, relinquishing his own law." Excerp. Egb., 16.

⁶⁸ Excerp. Egb. 82.



and the absence to any extent of papal interference are the principal reasons. To these may be added the attendance of the bishop at the popular courts which assured the accused churchman of a fair trial and possibly of special consideration. There was also the character of the Anglo-Saxon law which made the infliction of penalties of life or member an unusual occurence. The most severe punishment that was likely to be denounced against a convicted man was the uncertain judgment of outlawry. Had the law been so severe as to endanger the lives of the churchmen, there might have been a united protest; but its extreme leniency prevented the question from arising on such a basis.

King Alfred was the first to make the procedure in cases of clerks guilty of crime different from that of laymen. His law provides that, "If a priest kill a man...let the bishop secularize him: then let him be given up from the minster, unless the lord will compound his wer."

Evidently Alfred did not wish to punish the man in orders as he did the layman; but just what fate awaited the guilty clerk after degradation is not clear from the text. It seems likely that he was to be sent into the exile pre-

There are frequent admonitions to mildness in the laws.

"And the ordinance of our Lord and his Witan is: that Christian men, for all too little, be not condemned to death; but in general let mild punishments be decreed, for the peoples need."

V Ethel., 3: II Cnut, 2.

⁷⁰ Alf. ,21.

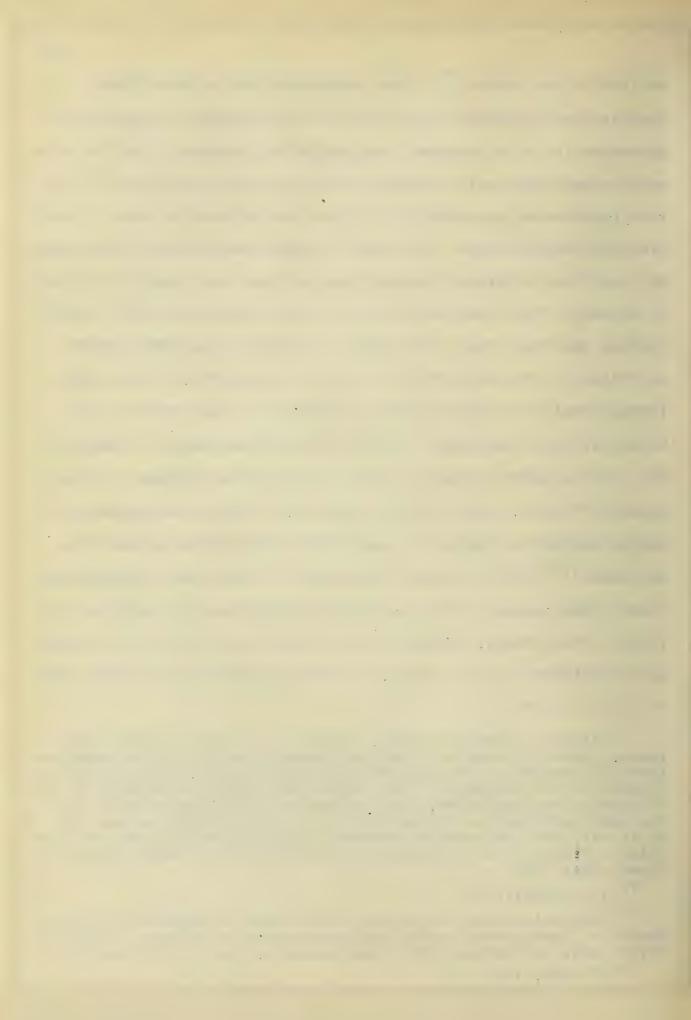


scribed by the canons. 71 This interpretation is drawn from a similar law of Ethelred which adds to the offenses in which this procedure is to be observed, and explicitly commands that the culprit be sent into exile "as far as the pope may prescribe."72 In this instance no opportunity is given the offender to make a composition for his crime. If these two laws are submitted to a careful test the difference between them and the real benefit of clergy is evident. The clerk is not given over to the church for trial?3 instead the king orders the bishop to punish a convicted priest according to the penitentials, and in consideration of that punishment remits the usual secular penalties. This conclusion is borne out by an enactment of Cnut in the exact words of Ethelred but with an added provision that, if the accused wishes to clear himself. "he shall do so with a three fold (lad), and unless he begins his bot to God and to man within thirty days he shall be outlawed."74 If the order of statement of this law is rearranged these steps appear: if the accused clerk denies his guilt he is to go to the ordeal, probably in the shire court; and if he fails. he is delivered to the bishop, who shall degrade him and turn him

[&]quot;If any clerk do murder, let him do penance in exile ten years, three of these on bread and water; then let him be received into his country, if he has done his penance well, so as to be approved by the testimony of the bishop or priest, or whoever it was to whom he was committed, that he has done his penance well. Let him make satisfaction to the parents of the murdered person; and if he do not, let him never be received into his country, but be like Cain, a vagabond and stroller over the face of the whole earth." Excerp Egb., 163.

⁷² VIII Ethel., 26.

⁷³ That this trial took place in the moot is borne out by the number of laws providing for the process to be followed. Withr., 16, 17,18; Edw. and Guth.,3; VIII Ethel.,19-24; I Cnut,5; II Cnut, 41.

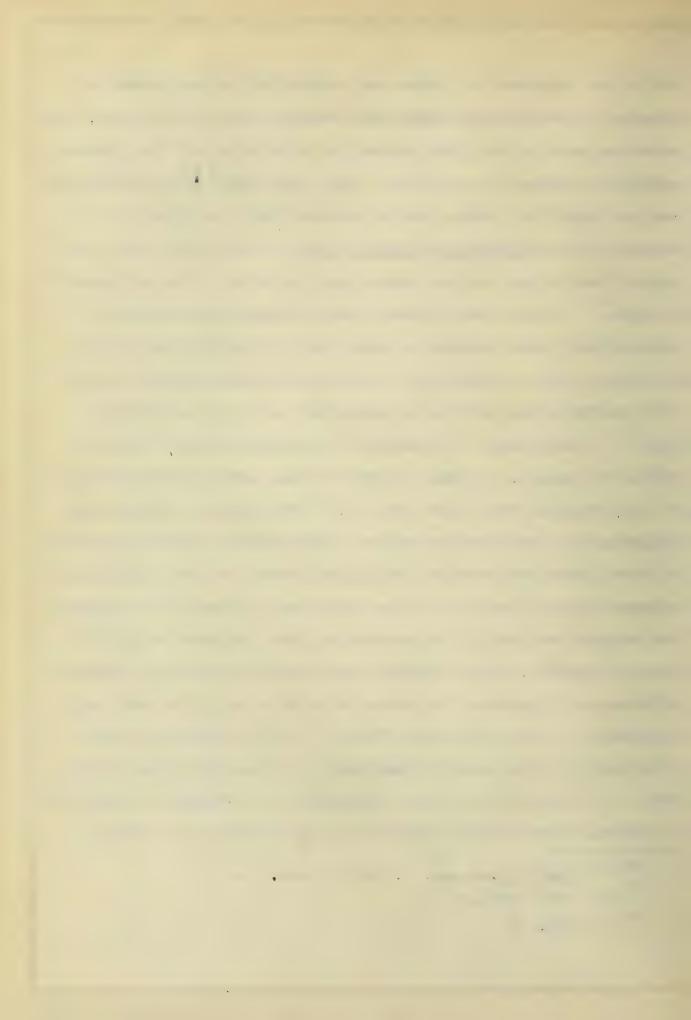


out of his monastery or church and enjoin him to the prescribed penance: if he does not begin that penance within thirty days, the exception made in his favor ceases to be of value and the secular penalty of outlawry is applied. Final proof that these provisions are not benefit of clergy may be deduced from a combination of several of the Leges Regis Henrici Primi, of which the first is a copy of Cnut's law and the others are a catalog of the penances to be done. 75 In the laws of Edward and Guthrum another grant of clerical privilege appears in which the distinction from benefit of clergy is not so apparent: "If a man in orders defile himself with capital crime let him be seized and held to the bishop's Here there is no mention of a secular trial, but one should be implied, for Cnut adopts the same law with the addition of "according as the offense may be", 77 and places it immediately following the one described above. This law was evidently adopted to cover cases not provided for by the other, and the distinction between the two lies only in the fact that in case of the murderer the penance set down in the canons is given the added weight of secular approval. while "capital crime" may be any one of several offenses and therefore the bishop is left to apply the penitental applicable to the particular offense. In both instances there is a remission of the temporal punishment of a guilty clerk for his crime in consideration of the assessment of a penance for his sin; an immunity from secular penalties but not benefit of clergy.

⁷⁵ To Leg. Hen,66, sec. 2, add 73, sec, 1-4.

⁷⁶ Law. and Guth., 4.

⁷⁷ II Cnut. 43.

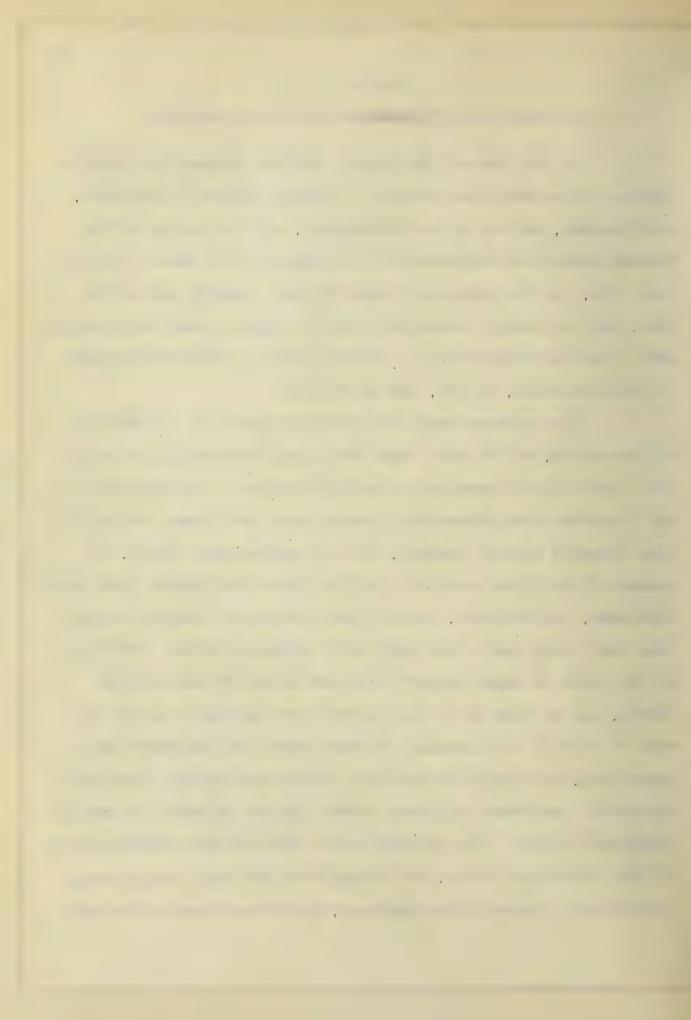


Chapter II

THE BEGINNINGS OF CLERICAL IMMUNITY IN ENGLAND

At the time of the Norman conquest England was rapidly falling behind the other states of western Europe in political, intellectual, and religious development, but the coming of the Normans marked the beginning of a change in every phase of English life, for the conquerors were the most capable men of the time, and the almost rudimentary state of Anglo-Saxon civilization gave them full opportunity to exercise their constructive genius in administration, in law, and in religion.

The conquest came at a critical period in the history of the church, at the time when the papacy was seeking to establish itself as the greatest of earthly powers. This ambition was not forgotten when Alexander II sanctioned the attempt which William intended against England, for the Anglo-Saxon church, by reason of its close relation with the state, had almost lost touch with Rome, and moreover, was in such a state of internal corruption that there was a real need for a sweeping reform. as the price of papal support promised to purify the English church, and as soon as he was secure upon the throne he set to work to fulfill his bargain. Without doubt the Conqueror was a devout man, willing to do the work of the church; but there was an equally important political reason for his interest in English religious affairs. The bishops were a part of the administration of the Anglo-Saxon state, and though they had been docile enough in the early stages of the conquest, their positions as leaders



consequently William thought it expedient to remove them and to fill their places with his own appointees, men who would be faithful to him, who would be alien to the people over whom they presided, and who would not be influenced by the traditions of their Anglo-Saxon predecessors. In this course he was supported by the papacy, and the legates were present at the council of Winchester in 1070 where Archbishop Stigand and numerous other English churchmen were deposed. In the same year Lanfranc was consecrated archbishop of Canterbury, and as soon as the majority of the church leaders were Normans the Conqueror was ready for the next step of his ecclesiastical program.

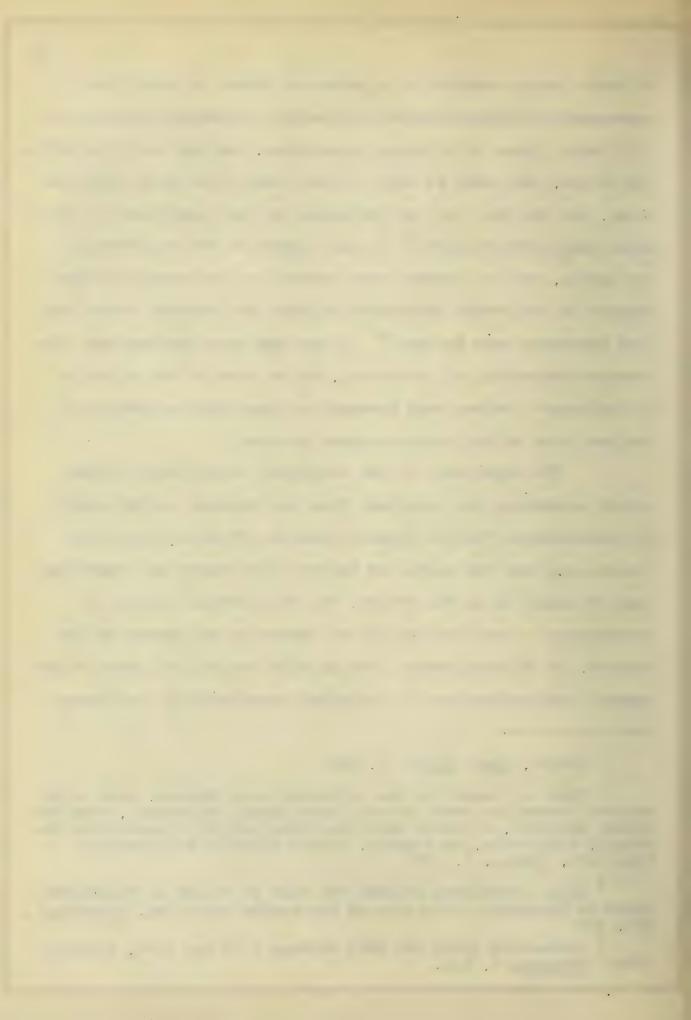
The importance of the ordinance which King William issued separating the spiritual from the temporal courts cannot be overestimated for the future relations of church and state. Recognizing that the canon law had not been obeyed and resolving that it should be in the future, the king forbids bishops or archdeacons to hear ecclesiastical causes in the courts of the hundred, or to bring causes dealing with the rule of souls before laymen: such matters are to be judged henceforth at the places

¹ Stubbs, Cons. Hist., I, 306.

^{2 &}quot;Hinc et nonnullos tam episcopos quam abbates, quos nulla evidenti causa nec concilia nec leges saeculi damnabant, suis honoribus privavit, et usque ad finem vitae custodiae mancipatos detinuit, suspicione, ut diximus, tantum inductus novi regni."
Rog. Hov., Chron., I, 123.

Jbid. Archbishop Stigand was sent to prison at Winchester where he remained to the time of his death. Ran. Hig., Polychron., VII. 259.

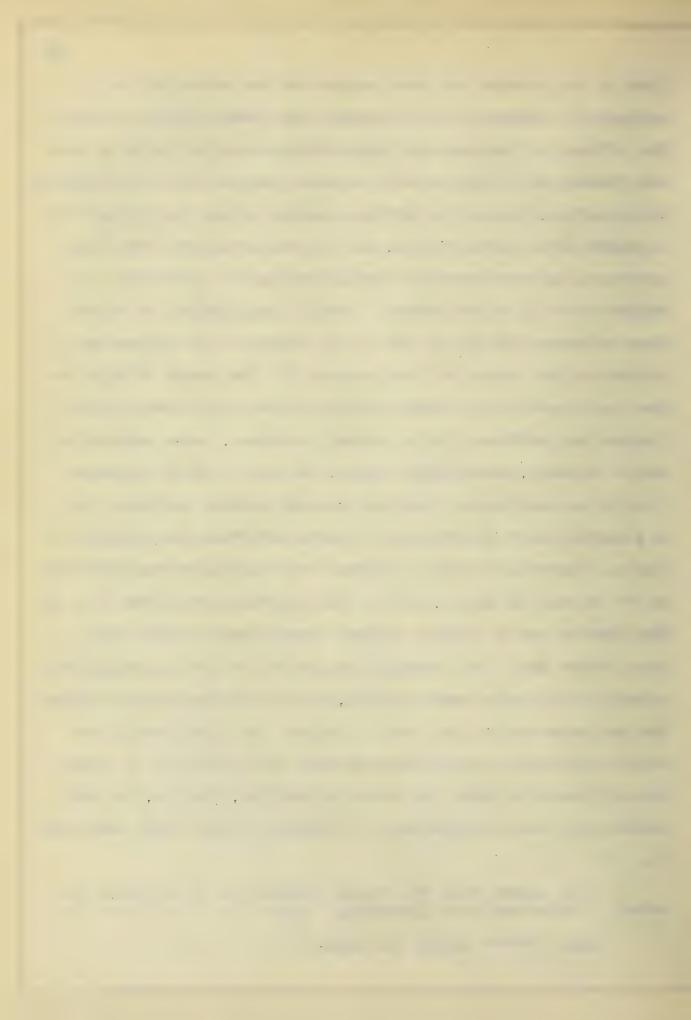
⁴ Liebermann fixes the date between 1070 and 1076, probably 1072. Gesetze, I, 485.



fixed by the bishops for that purpose and the canon law is to supplant the national law in deciding the cases brought to trial. The officers of the temporal administration are forbidden to concern themselves in any way with matters reserved for ecclesiastical determination, unless the parties summoned before the bishop fail to appear after three summons, and are excommunicated for their contumacy: in such cases the secular arm may be called upon to enforce the will of the church. Finally iudiciumbis "to be nowhere undergone but in the see of the bishop or in a place appointed by the bishop for that purpose." The result of this decree was to establish a court having exclusive cognizance of ecclesiastical matters. Suits between churchmen, cases concerning church property, matrimonial causes, and the trial of ecclesiastical crime were barred from the communal courts; but there was no reservation of jurisdiction in cases involving the persons of clerks. Moreover it does not appear that the bishop was forbidden to sit in secular causes, unless that conclusion be drawn from the fact that he was to appoint a place where ordeals should take place before him. The jurisdiction granted to the ecclesiastical judge by this decree seems limited, yet it was the entering wedge for the great claims that were to follow; the church would not stop at this: the courts Christian must have the right to determine all cases to which the canon law applied, that is, to every action involving the privilege or property of the church and every

⁵ It is agreed that the proper translation of this word is ordeal. Liebermann says Eisenordal. Ibid.

⁶ Ibid; Stubbs, Select Charters, 85.



case concerning the right, person, or property of the churchmen.

That the king did not intend that the right of action against churchmen should pass out of his hands is clear from his conduct both before and after the issuance of the ordinance. Bishop Egelric, who had resigned the see of Durham in 1057' and retired to the monastery of Peterborough, was among the first to feel the displeasure of the Conqueror. According to Matthew Paris. Egelric was accused of treason and was condemned to prison at Winchester by the king, and his brother Ethelwine, who had succeeded to the see of Durham, was outlawed at the same time. Ethelwine became reconciled to the king but later was involved in the northern revolt: and after the surrender at Ely he was sent into close captivity in the monastery of Abingdon by the royal command. 11 Symeon accuses him of an attempt to rob the church of Durham and tells of a trial held at the monastery. Here the bishop swore that he had stolen nothing: but while he was washing his hands after his perjury the bracelets dropped off the offending member and his guilt was made so manifest that the king ordered

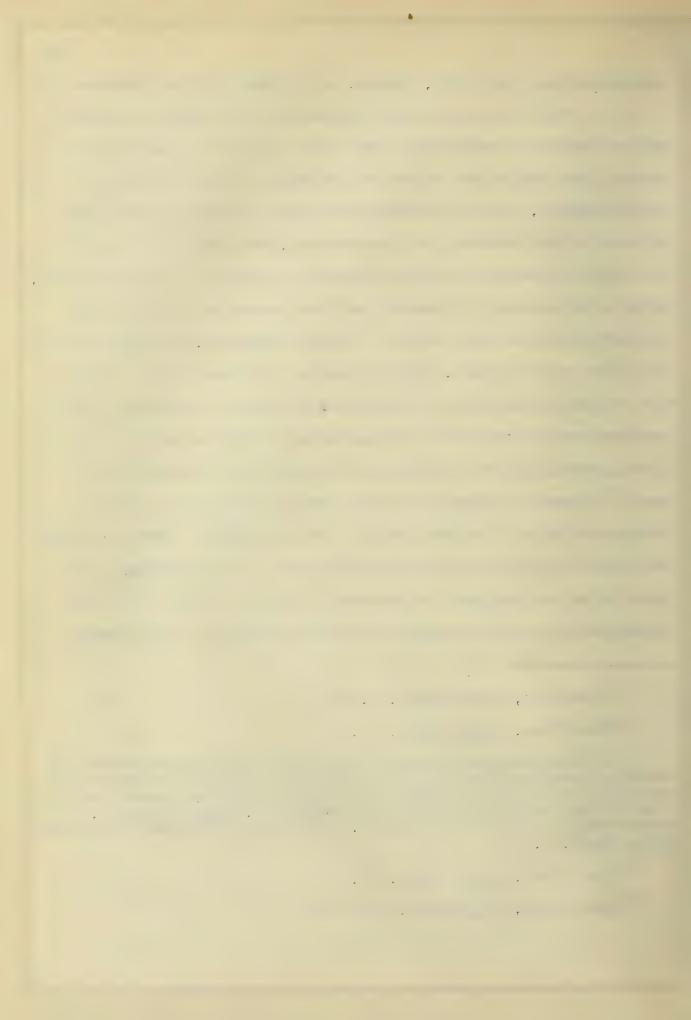
⁷ Sym. Mon., Opera Omnia, I, 92.

⁸ Mat. Par., Chron. Maj., II, 5.

⁹ A less plausible story is that the bishop was arrested for carrying away the property of the church of Durham and because he would not return it was taken to London and held in custody and died in the captivity of the king. Sym. Mon., Opera Omnia, I, 92. Malmesbury, in a confused account, accuses him of promoting piracy. Gest. Pont., I, 271.

¹⁰ Mat. Par., Chron. Maj., II, 5.

¹¹ Ran. Hig., Polychron., VII, 267.



him held in prison. 12 All accounts agree that he died shortly after because "he would not eat for sorrow." 13 Among others who were imprisoned by the will of the king were abbot Ealdred of Abingdom who had attempted to aid the defenders of Ely, 14 and Egelric, bishop of the South Saxons, "who was degraded in an uncanonical manner by the Council of Winchester and placed in confinement by the king." 15 This case appears again at the council of Winchester in 1076 but the record gives no idea of what final disposition was made of it.

In none of these cases is there any record of any claim of clerical privilege and it is unlikely that any was made; there is however one instance in which the immunity of the clergy was asserted during the Conqueror's reign. Odo, bishop of Bayeaux, Earl of Kent, and half brother of the king, became involved in a scheme to succeed Gregory VII in the papal chair. With this in mind he induced many of the Normans in England to join an expedition which he was planning to accompany him to the holy city. The king hearing of this returned in haste from Normandy, and stopped the bishop when he was at the point of departure. Then, calling a council, William asked advice concerning the fate of Odo,

¹² Sym. Mon., Opera Omnia, I, 105. Again he is spoken of as "the plunderer of the Church of Durham," ibid., 94.

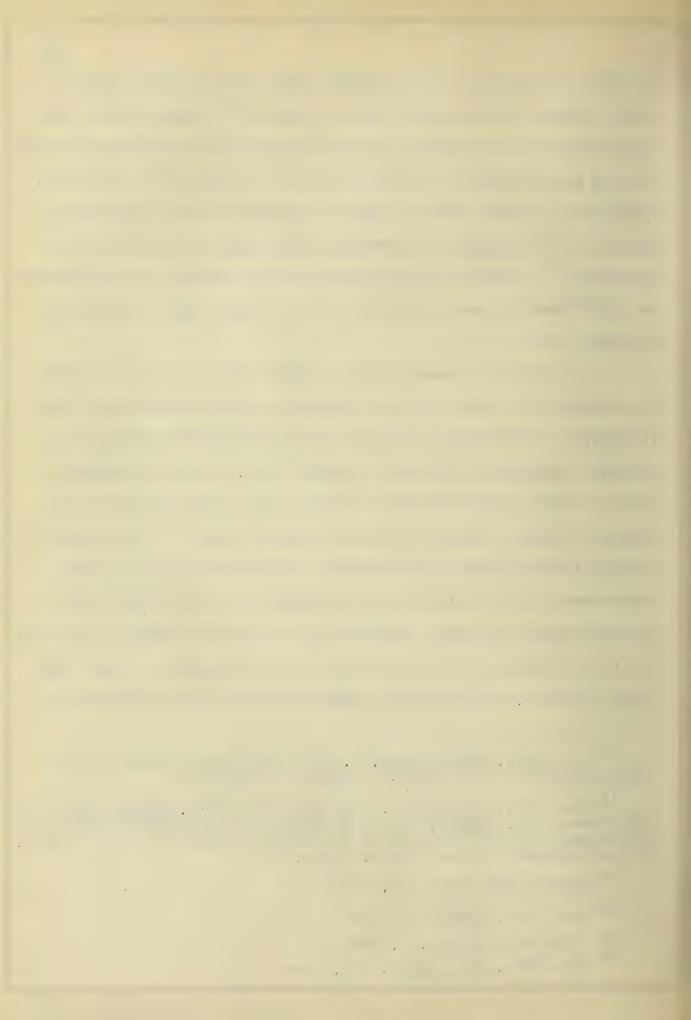
Ran. Hig., Polychron., VII, 267; Sym. Mon., Opera Omnia, I, 105; Flor. Wig., Chron., II, 8. Florence also confused the story of Ethelwine. In 1070 the story of the bishop's death is told (ibid.), but he reappears the next year, ibid., 9.

¹⁴ Chron. Mon. Abing., I, 486.

¹⁵ Rog. Hov., Chron., I, 124.

¹⁶ Wilkins, Concilia, I, 367.

¹⁷ Ord. Vit., Ecc. Hist., III, 188.



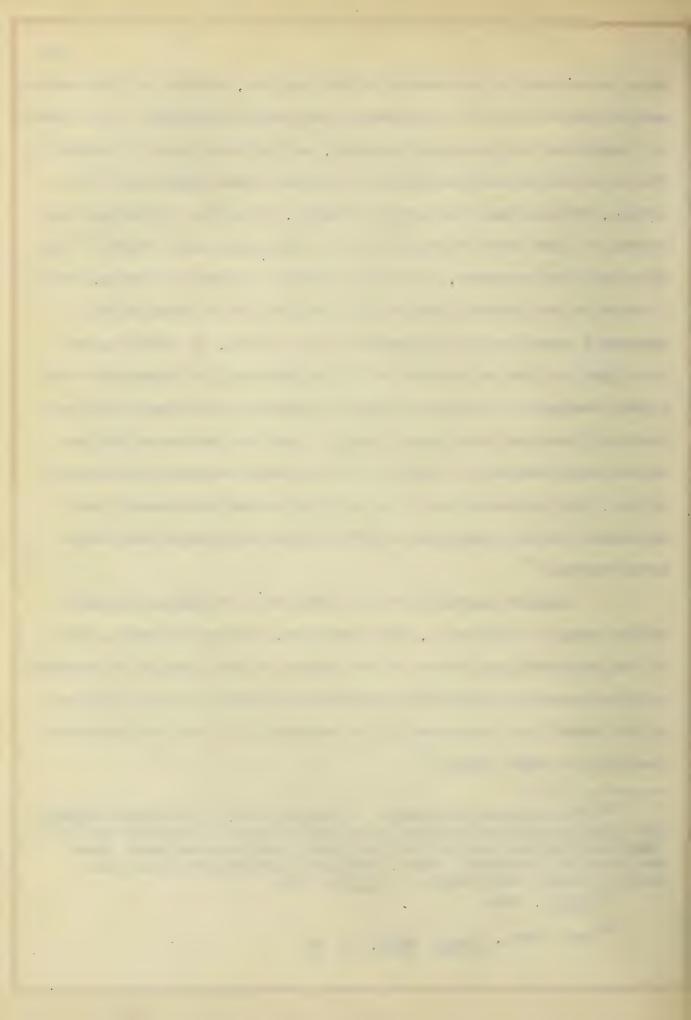
whom he accused of oppression of the English, robbery of the church. and of seduction of his followers from their allegiance. The council hesitated to pronounce judgment, so the king himself ordered Odo to be seized and confined; the nobles again appearing to be afraid, William made the arrest himself, while Odo protested that he was a clerk and a bishop whom only the pope could judge. 18 this the king answered. "I do not condemn a clerk or bishop, but I seize an earl whom I have myself created and to whom as my steward I committed the government of my realm, it being my desire that he give an account of his stewardship." Thereafter the bishop was sent to Normandy where he remained in prison till the death of the king four years later. Upon his death-bed William, on the supplication of many of his followers ordered the release of Odo. but protested that the man whom he had imprisoned "not as bishop but as tyrannical earl"could not be trusted and would never reform. 19

Another instance of the trial of a churchman appeared in the reign of William I, when Remigius, bishop of Dorset, one of the earliest appointees of the Conqueror was accused of treason; on this occasion a follower undertook the ordeal of the hot iron in his behalf and completed it so successfully that Remigius was restored to royal favor. 20

^{18 &}quot;Illo auten reclamante: 'Clericus sum, et minister Domini; non licet pontificem damnare sine judico Papae;' providus rex ait: 'Ego non clericum nec antistitem damno, sed comitem meum, quem meo vice mea praeposui regno, rationem commisae villicationis audire volens comprehendo.'" Ibid. 191.

¹⁹ Ibid., 247.

²⁰ Mat. Par., Chron. Maj., II. 20



one of the first problems that William Rufus had to face was a revolt of the Norman baronage headed by his uncle, Odo of Bayeaux. The latter had been released from prison after the death of William I and had come to England expecting to resume his old position; but, finding that the "affairs of the kingdom were not arranged, as formerly, according to his will," 21 withdrew from the court and formed a conspiracy with Robert of Merton, Roger of Shrewsbury, and others to place the weak Robert Curthose upon the throne. The rebellion that followed was suppressed by William with the aid of his English subjects, and Odo was forced to march out of Rochester castle in disgrace, and to abjure the realm.

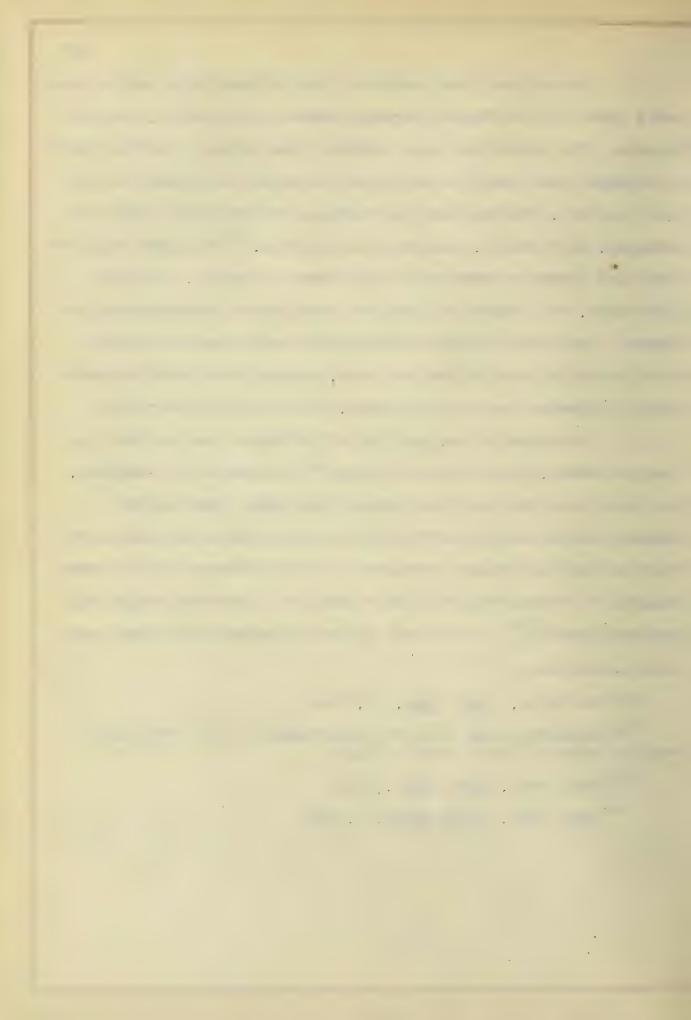
In spite of the position of influence that he held in the government, the bishop of Durham, ²² William of St. Karileph, was drawn into the rebellion against his king. Huntington ²³ claims that he took an active part in the uprising but the better view is that his treason consisted of the withdrawal of the seven knights of Durham from the king's army at a time when their help was most needed. ²⁴ At any rate he was disseised of his own lands

²¹ Wm. Malm., Gest. Reg., II, 360.

Malmesbury says that the importance of this very bishop was the cause of Odo's revolt, ibid.

²³ Hen. Hunt., <u>Hist. Ang.</u>, 214.

²⁴ Sym. Mon., Opera Omnia, I, 181.

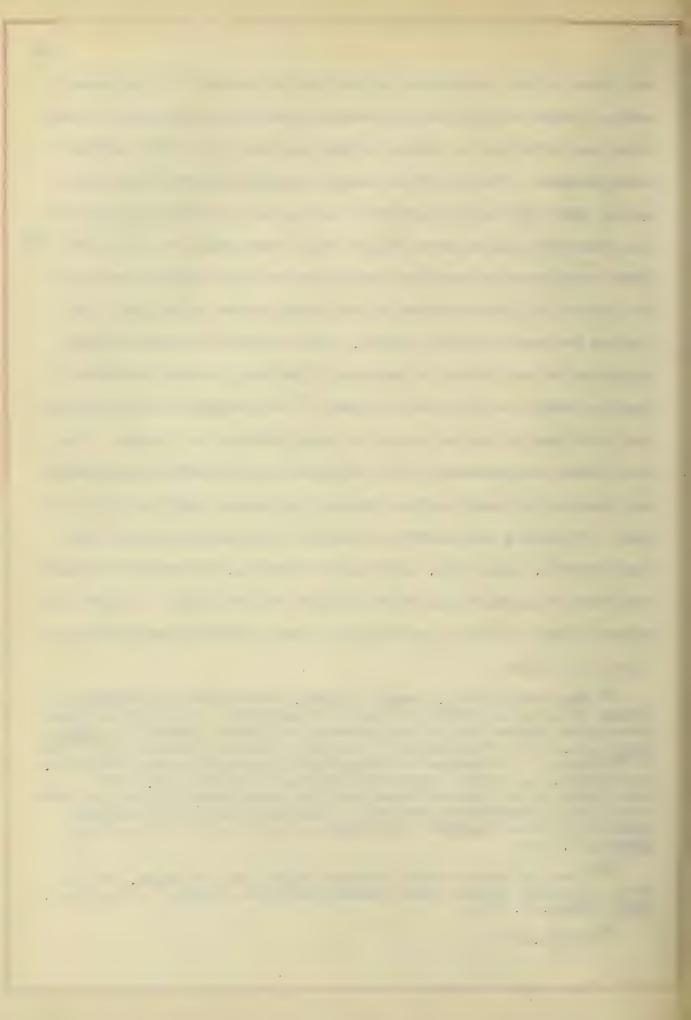


and those of his bishopric by the king's order. 25 He at once sent a letter to the king protesting that he was innocent of any wrong and offering to appear before the king if a safe conduct were provided. He fortified himself against eventualities by adding that "it is not permitted to all men to try bishops" and that therefore he expected to be tried "according to his order."26 After considerable haggling the letter of safe conduct was sent and Bishop William appeared at Salisbury where he begged "that justice be done him as a bishop." and offered to make a formal purgation of any crime or perjury. The king however demanded that he submit to trial as a layman, 27 whereupon William claimed the privilege of his safe-conduct and returned to Durham. soon found the persecution to which he was subjected intolerable and resolved to make another attempt to gain a hearing from the king. To assure his safety he entered into an agreement with three counts, Alan, Odo, and Roger of Poitou, according to which they were to conduct him safely to the king's court. If the king refused "to do justice according to the episcopal law and by the

Bishop William as guilty of basest treachery. The Peterborough chronicler places him in the category of Judas Iscariot. Saxon Chron., II, 191. The cause of this may best be shown by the words of Florence: "Intererant etiam praedicto consilio cum Rotberto, nepote suo, quod etiam erat pejus, Willelmus episcopus Dunholmensis: ea quoque tempestate rex praedictus illius, ut veri consiliarii, fruebatur prudentia; bene enim sapiebat; ejusque consiliis totius Angliae tractabatur respublica." Flor. Wig. Chron., II, 21.

^{26 &}quot;Non est enim omnium hominum episcopos judicare, et ego vobis secundum ordinem meum omnem justitiam offero." Sym. Mon., Opera Omnia, I, 172.

²⁷ Ibid., 175.

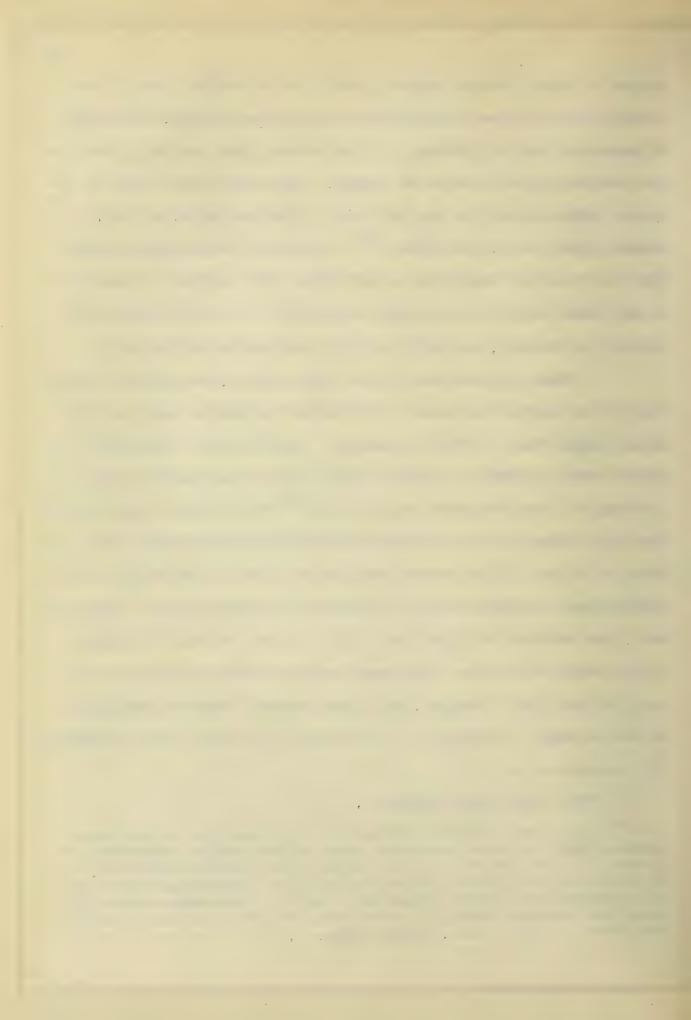


judges by whom a bishop ought rightly to be judged," or if the bishop took an appeal from the decision of any judge, they were to reconduct him to Durham. If the bishop fared so badly that he was not permitted to make an appeal, they were to see that he received safe-conduct to the continent "with his gold, silver, horses, arms, dogs, and hawks." In return the bishop promised that he would not reinforce or revictual the castle of Durham or do any other injury to the king and that if he were transported across the channel, he would deliver the castle to the king.

when William came before the council, he raised a question as to whether he ought to be judged unless he and his episcopal judges were in full vestments. Lanfranc who conducted the king's case throughout, brushed this point aside saying that clothing did not interfere with truth. 29 The bishop then demanded that his bishopric be returned to him before he made any plea. On being told that it had never been taken from him he replied that he had been dispossessed of everything he owned without just judgment, and refused to plead until his property should be canonically restored to him. Lanfranc replied that he must first answer to the king's charges, and then present whatever complaints he had to make. In spite of the bishop's protests, the accusation,

²⁸ Sym. Mon., Opera Omnia, I, 177.

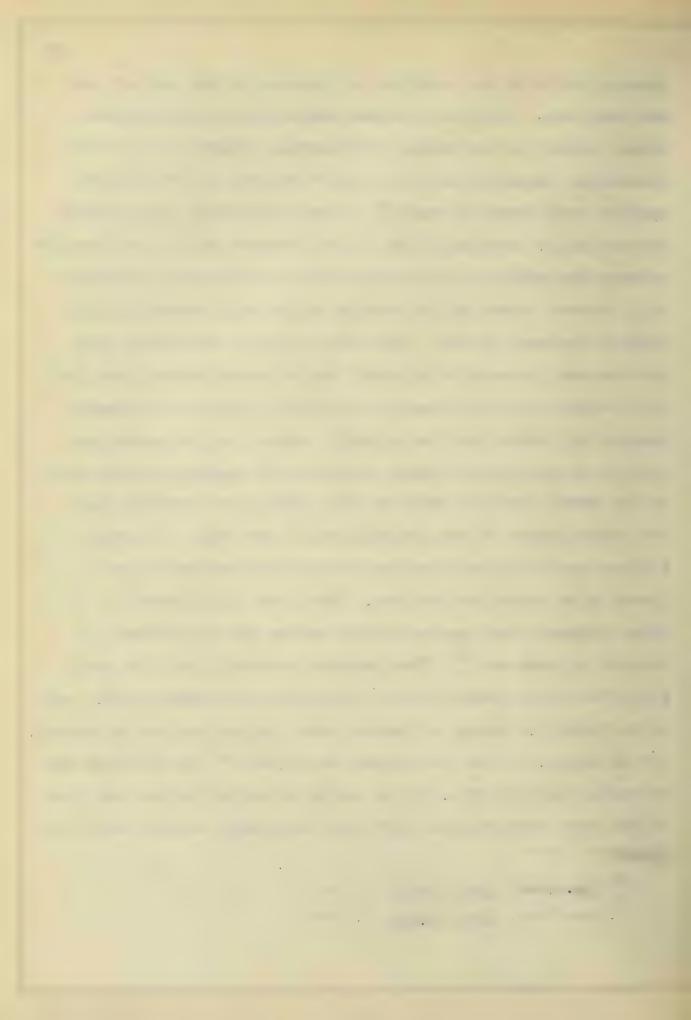
^{29&}quot;'Nihil se prorsus acturum ibi nisi canonice et secundum ordinem suum, et sibi videbatur quod ecclesiastica consuetudo exigebat, ut ipse revestitus ante revestitos causam suam diceret, et causantibus canonice responderet.' Cui Lanfrancus archiepiscopus respondens, 'Bene possumus,' inquit, 'hoc modo vestiti de resalibus tuisque negotiis disceptare, vestes enim non impediunt veritatem.'" Sym. Mon., Opera Omnia, I, 179.



charging him with the desertion of the king in the hour of need was then read. The bishop refused absolutely to consider the laymen present as his judges; but Lanfranc ordered him to withdraw while "laymen as well as clerks" remained and "considered equally" what should be done. 30 After admonishing the churchmen present to act canonically the bishop withdrew only to be recalled to hear the archbishop of York announce the decision of the council: he must answer to the charges of the king before his fief would be returned to him. The bishop demanded proof that this decision was in accord with canon law or ecclesiastical use; for if he submitted to an uncanonical judgment he would sin gravely against Holy Church and the priestly order. He also asked permission to consult the bishops present: but Lanfranc refused this on the ground that the prelates were judges, and demanded that the bishop submit to the jurisdiction of the court. In reply William recounted the injustice of the whole proceeding and closed by an appeal to the pope, "the Vicar of St. Peter ... to whose judgment great ecclesiastical causes and the judgment of bishops is reserved."31 Then Lanfranc assumed a familiar position: "We do not judge you as a bishop but as a feudal lord, just as we judged the bishop of Bayeaux whom the king called to account. not as bishop, but as his brother and a count." St. Karileph had evidently expected this, for he called attention to the fact that he had never mentioned his fief, but had spoken only of his

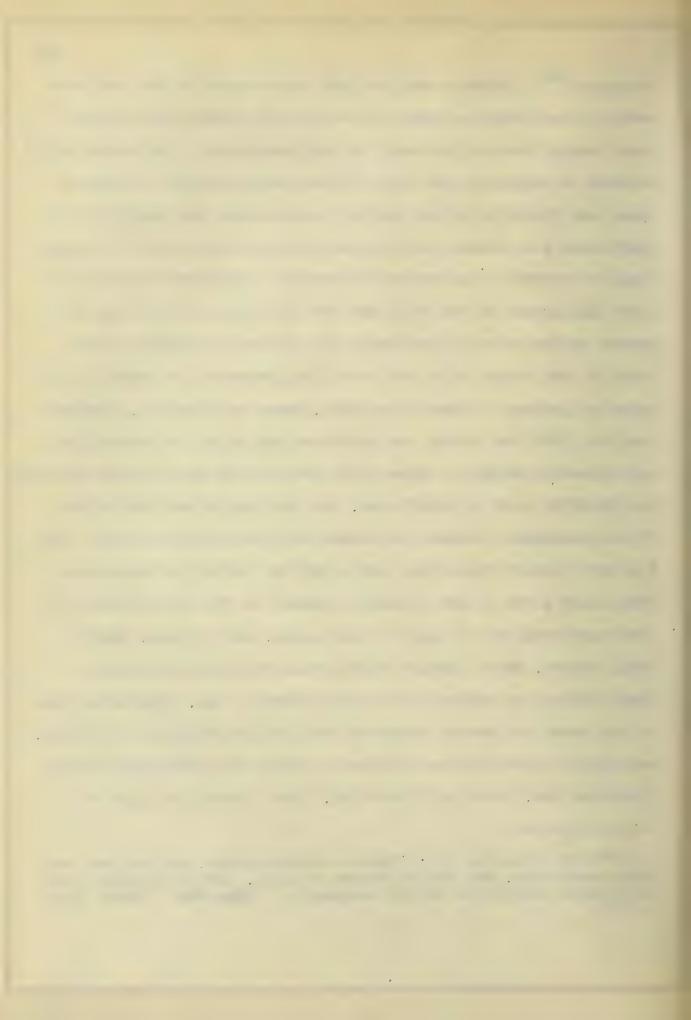
³⁰ Sym. Mon., Opera Omnia, I, 182.

³¹ Sym. Mon., Opera Omnia, I, 184.



bishopric. 32 Lanfranc replied that such a mention was not necessary: the bishop was known to be a great feudal lord and had been brought before the court in that character. The bishop still refused to recognize the court as one before which he ought to plead and therefore after another consultation the sentence of forfeiture was passed upon him not for his crime but for his refusal to enter a plea before the council. | William promptly renewed his appeal to the Holy See but the king cut short any argument on the point by declaring the delivery of Durham castle into his own hands to be the condition precedent to permission to make the journey to Rome. Lanfranc, weary of argument, advised the king that the bishop had forfeited any right to protection and therefore might be taken into custody; but this threat affected the knightly word of Count Alan, who then explained the nature of the agreement between the counts and the bishop and asked that the safe conduct which they had given the latter be respected. The bishop given a last chance to submit to the jurisdiction of the court replied: "I deny it absolutely, and in Rome, where I shall appear, where justice rather than violence dominates, I shall sustain my rejection of this judgment: and, because not one of you dares to testify anything that is displeasing to the king. and since I have no other witness I invoke the testimony of the Christian law, which is in writing, that I have the right to

^{32 &}quot;Et episcopus ait, 'Domine archiepiscope, ego nullam feci hodie mentionem, vel feofum habere me dixi, sed de episcopii mei dissasione conquestus sum et conqueror.'" Sym. Mon., Opera Omnia, I, 184.



proceed to Rome to receive final sentence in this matter from the pope."

The king replied: "Say what you will, you will not get out of my hands till you have first delivered over the castle."

This was the final word and the bishop seeing no way out consented to surrender the castle on the condition that as soon as it was in the hands of the king he should be permitted to proceed to Rome.

But now a new charge was made against the bishop, the illegal seizure of two hundred cattle belonging to the bishop of Coutances.

To a question from the king, Lanfranc replied "it would be unjust to implead the bishop further since he holds nothing of you and ought to have safe conduct."

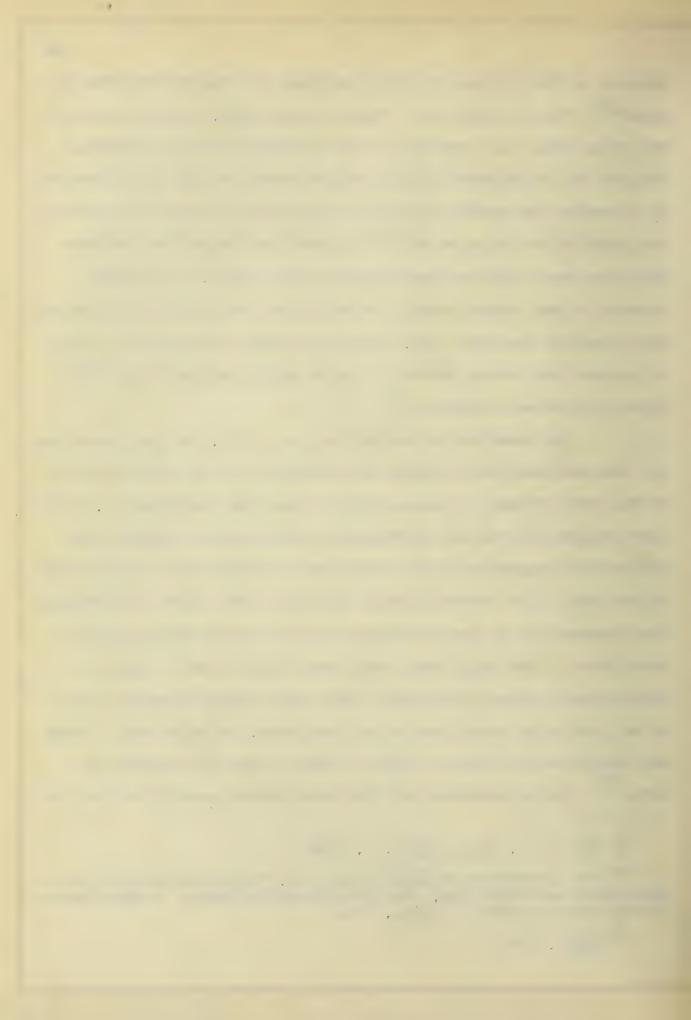
The troubles of William were not over, for his departure for the continent was delayed long beyond the time appointed and he was even ordered to appear again before the king's court, this time because his men had provisioned Durham castle between the time of the compact with the counts and the delivery of the castle to the king. The bishop pleaded his safe conduct and his poverty; "the horses that he had intended to sell had been eaten," but he added that if the king would then permit him to go in peace to Rome he would appear and prove "that these things were not done by me, nor by my order, nor to my knowledge, and also that I have not the price of a single loaf of bread -- nor do I expect to have."

The intercession of the three counts saved him from the

³³ Sym. Mon., Opera Omnia, I, 188.

^{34 &}quot;Et Lanfrancus archiepiscopus ait, 'Injustus esset si amplius implicitaretis eum, cum de vobis nihil teneat et securum conductum habere debeat." Ibid. 191.

³⁵ Ibid., 194.



trip to London and at length he was allowed to cross the Channel to Normandy where he was received with honor by Robert Curthose. Three years later he was reconciled to the king and returned to England.

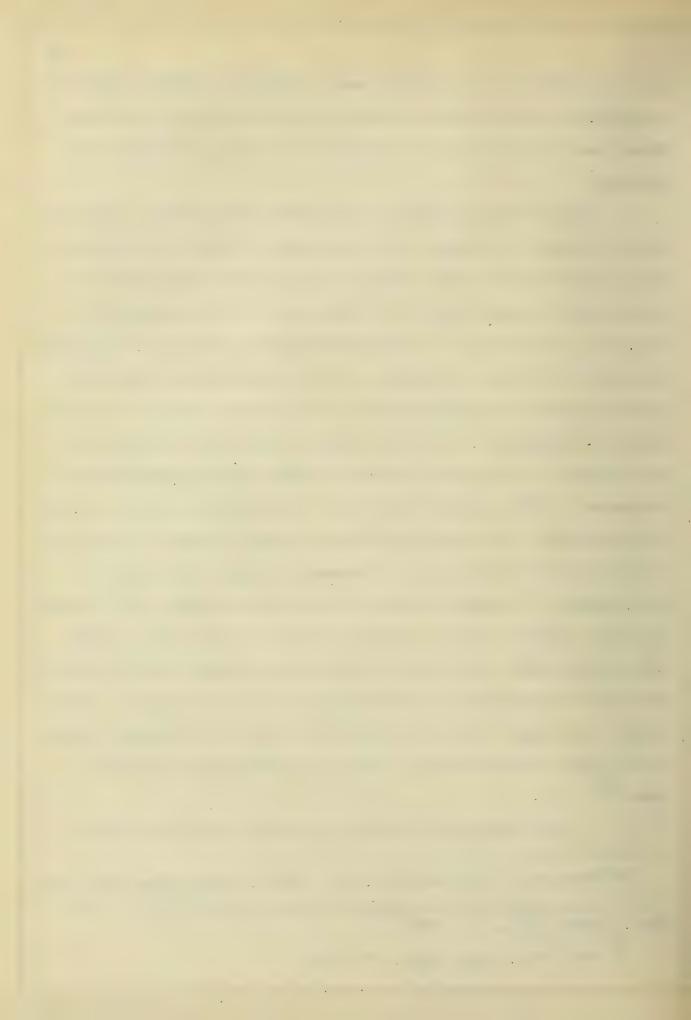
The orderly reign of Henry added but little to the history of benefit of clergy. By his charter of 1100 the king promised to abolish the evils with which his brother had vexed the church and to restore the law of the land as it had existed in the days of his father. 36 He arrested Ranulph Flambard. 37 who had succeeded to the see of Durham, but no churchman was likely to protest against the imprisonment of the man who had been the late king's tax collector, and the scourge of the church during the past decade. In fact they hailed his fall and punishment as the vengeance of God upon the wicked and the forecast of better things for the future. The single incident related of Henry I took place in 1106 during the invasion of Normandy. Robert, the abbot of Dive, agreed to betray the king to his brother Robert and offered the free occupancy of his fortress to Henry as the snare. The king accepted the offer but his scouts discovering that the castle was full of armed men, he captured it by surprise assault. Abbot Robert was brought before the king who ordered his release saying. "Were it not for your habit I would have you torn limb from limb."38

Upon the death of Henry the country was given over to

³⁶ Statutes of the Realm, I, 1. Stubbs, Select Charters, 100.

Paris says with the counsel of the English people. Mat. Par., Chron. Maj., II. 118.

³⁸ Ord. Vit., Ecc. Hist., IV, 223.

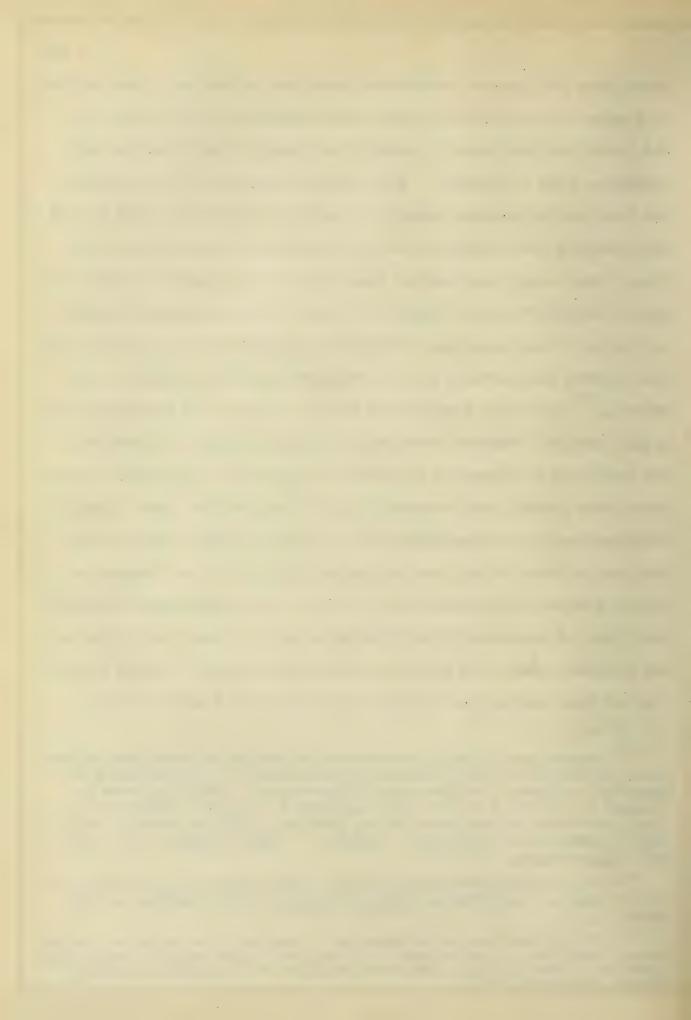


turbulence and general confusion which was calmed upon the arrival of Stephen of Blois. who, after some hesitation on the part of the lords who had sworn to receive and support Matilda, was accepted as king of England. His position apparently established. the king called a great council to meet in London in 1136, and at this meeting the complaints of the clergy were laid before the king. The clergy represented themselves as oppressed by taxation and by the practice of simony: but they laid particular emphasis on the fact that they were involved in pleas and suits before secular courts and asked that the jurisdiction of the church be respected. 39 The king assented to all the demands of the church and by his second 40 charter promised to abolish simony, to restrain the exactions of sheriffs and other officers of the crown, to refrain from seizing the temporalities of vacant sees, and finally to recognize the jurisdiction of the church courts over the persons and effects of all ecclesiastical persons. But Stephen's promises were to go unfulfilled: for the next year there occurred the first of a series of revolts which were to mark his reign as the greatest period of anarchy in English history. At the beginning of this period the clergy stood firmly in support of the

^{39 &}quot;Super hac igitur inverecunda ecclesiae depressione, alteraque, ut verius dicam, Pharaonis grassatione, in facie regis vehementer conquesti, obnixe eum imploraverunt, quatinus suae ecclesiam libertati redderet, sui eam juris compotem efficeret, illius instituta legibus secularium praeponi, illius decreta nulla ratione praevalente pateretur remitti." Gest. Steph., 1136 (Howlett, Chronicles, III, 18).

The first charter was directed more especially to the people at large. See Stubbs, <u>Select Charters</u>, 119; Statutes of the Realm, I, 4.

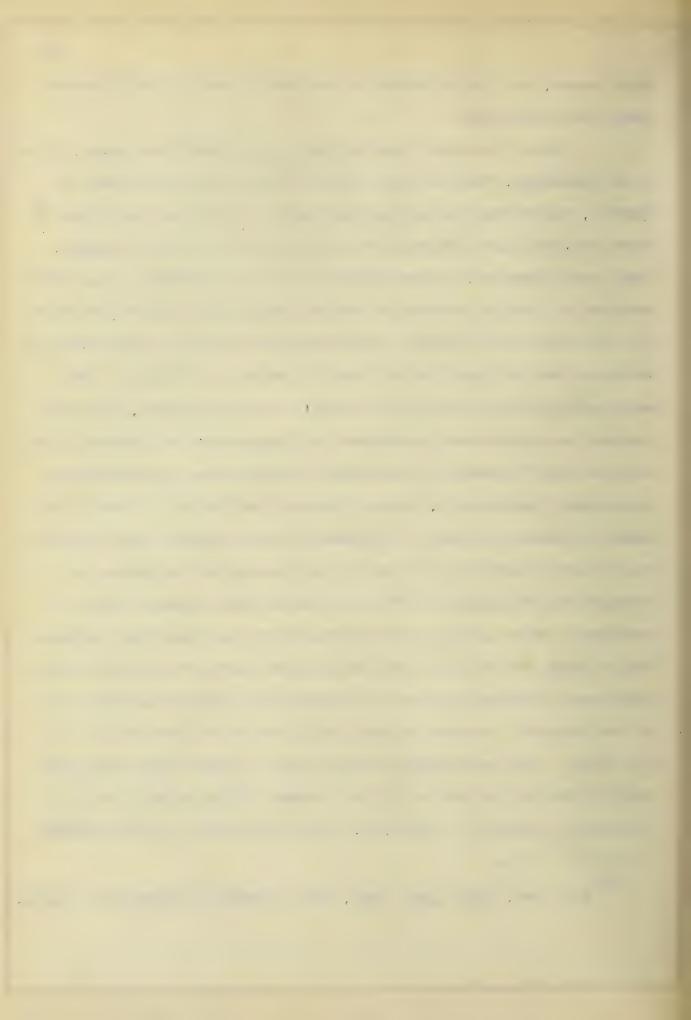
^{41 &}quot;Ecclesiasticarum personarum et omnium clericorum et rerum eorum justitiam et potestatem et distributionem bonorum ecclesiasticorum in manu episcoporum esse perhibeo et confirmo. "Stubbs, Select Charters, 120.



royal cause, but the attitude of the king himself finally drove them into opposition.

Among the most powerful men of the realm was Roger, bishop of Salisbury, who had been a poor clerk until discovered by Henry I, under whom he had rapidly risen to position and power. 42 Roger had used his influence with the king to have his nephews. Nigel and Alexander, chosen bishops of Ely and Lincoln. All three were men of lordly pretensions who had surrounded themselves with all the display of temporal aristocracy and who were interested in political and military rather than in religious affairs. They were particularly interested in castle building; Roger, who had erected the magnificent structures at Sherbourne and Devizes, also held the king's castle at Salisbury, which he had remodeled and made almost impregnable, while Alexander had built a strong fortress at Newark on Trent. The power of the bishops moved the laymen to envy; they did not like to see themselves surpassed in strength by churchmen and for this reason they entered into a conspiracy which aimed at the overthrow of Roger and his nephews. They alleged to the king that the bishops were not using the power which was intrusted to them to maintain his dignity and honor but on the contrary intended to use their castles to deprive him of his crown. They accordintly advised him to seize the bishops and deprive them of the seats of their power. This counsel met with the secret approval of the king, but he hesitated to act because

Wm. New., Hist. Rer. Ang., 1139 (Howlett, Chronicles, 1,35).



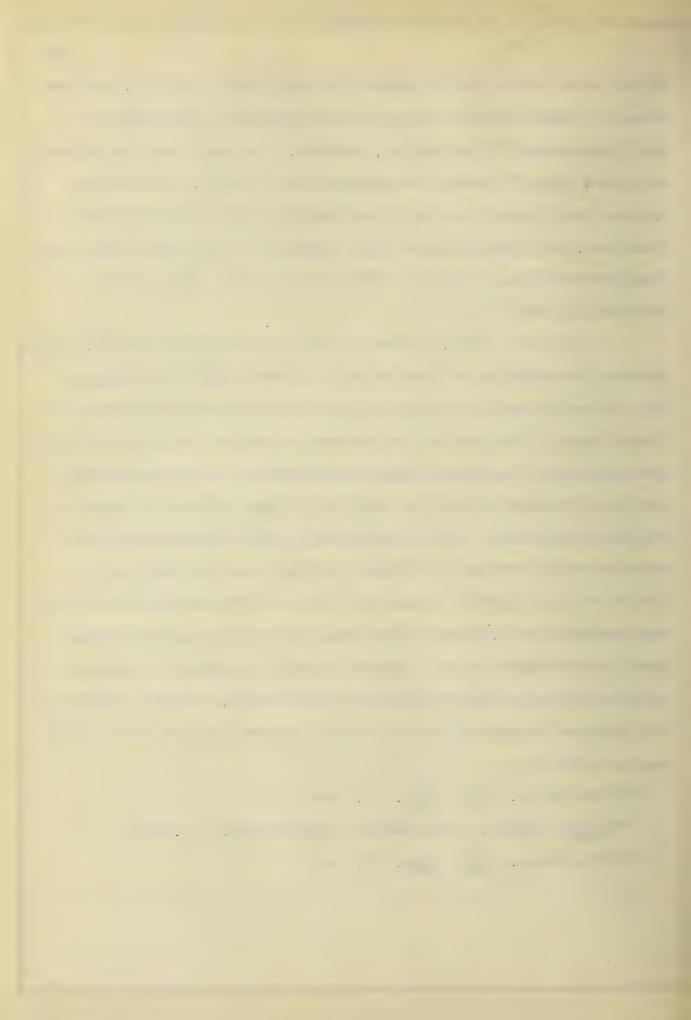
of the odium which such a proceeding would cast upon him, and because he feared to take violent measures against churchmen of such importance. 43 The nobles, however, reasoned that the things that were Caesar's should be rendered unto Caesar, and that so long as the bishops were not disturbed in their ecclesiastical functions, no wrong would be done. Moreover they argued that the bishops were transgressors of the episcopal rule and might be arrested as such.

In July, 1139, a great council assembled at Oxford, where through the scheming of the nobles, a street fight over lodgings took place between the followers of Alan of Brittany and those of Bishop Roger. Men were killed on both sides and the king seizing the opportunity, arrested Roger and Alexander as the responsible parties. Brought before the king the bishops offered to make a suitable settlement; but the only terms that Stephen would consider were the surrender of their castles into his hands as a pledge of good faith. Meanwhile Nigel of Ely realizing his danger avoided arrest, fled to Devizes, and put the castle in readiness to withstand seige. Stephen wishing to avoid so difficult an undertaking as the reduction of this castle, took the bishops with him and appearing before Devizes ordered the prisoners to be

⁴³ Wm. Malm., Gest. Reg., II, 548.

⁴⁴ Gest. Steph., 1139 (Howlett, Chronicles, III, 47).

⁴⁵ Wm. Malm., Gest. Reg., II, 549.



brought Bishop Roger's son, ⁴⁷ Roger Poor, who had been royal chancellor, and threatened to hang him before the eyes of the defenders unless the castle were given up. Having gained the desired result, ⁴⁸ Stephen moved on to the castle of Sherbourne to which he gained admission by the same methods. Alexander's castles at Newark and Slaford were also delivered to the king under similar compulsion. Having thus gained possession of the castles, Stephen seized the treasures that he found and used them to obtain the hand of Constance, daughter of the French king, for his son Eustace. ⁴⁹

This affair caused a great stir in England and the clergy united in condemnation of the king's action. Henry, bishop of Winchester, papal legate, and brother of the king, joined the opposition and summoned Stephen to appear before an ecclesiastical council at Winchester. Here the bishop boldly denounced the king for his offense against God and the church and offered, despite relationship or personal danger, to execute whatever sentence the council might decree. ⁵⁰ After this speech the representatives

This is the version of the author of the <u>Gesta Stephani</u>.

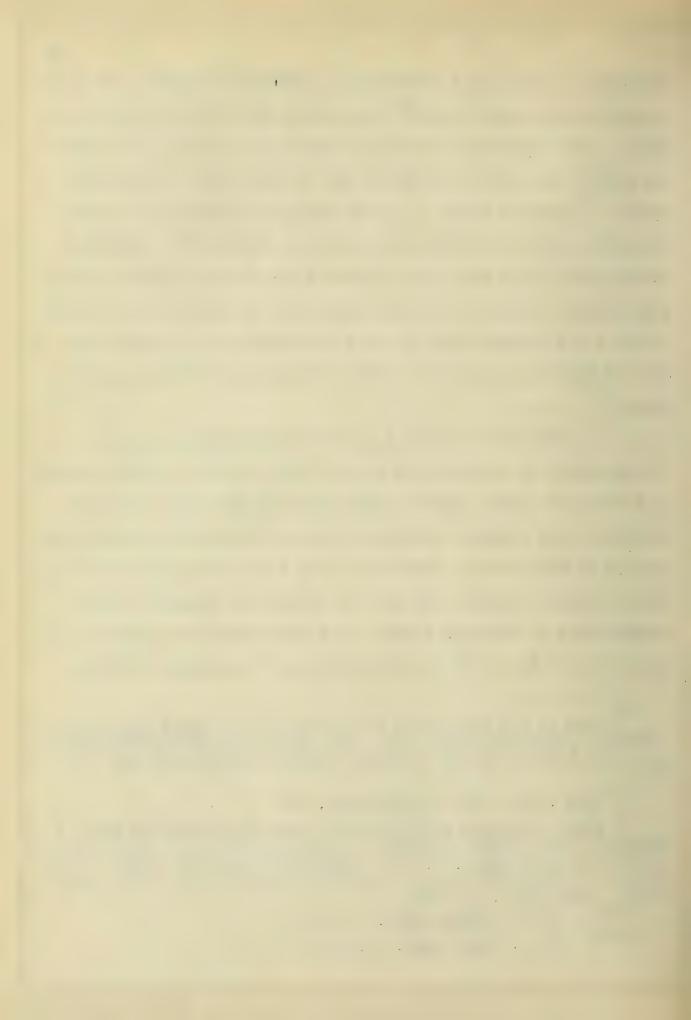
Howlett, <u>Chronicles</u>, III, 49. The other chroniclers vary greatly in the <u>details</u> of the story but the principal facts are the same.

⁴⁷ Ibid.; Hen. Hunt., Hist. Angl., 265.

As Vitalis alleges that the castle was surrendered by Maud of Ramsbury, the bishop's concubine, to save the lives of her lover and their son. Ecc. Hist., V, 120. Malmesbury says that Roger's fast was self imposed, in order to bring his nephew Nigel to the king's terms. Gest. Reg., II, 549.

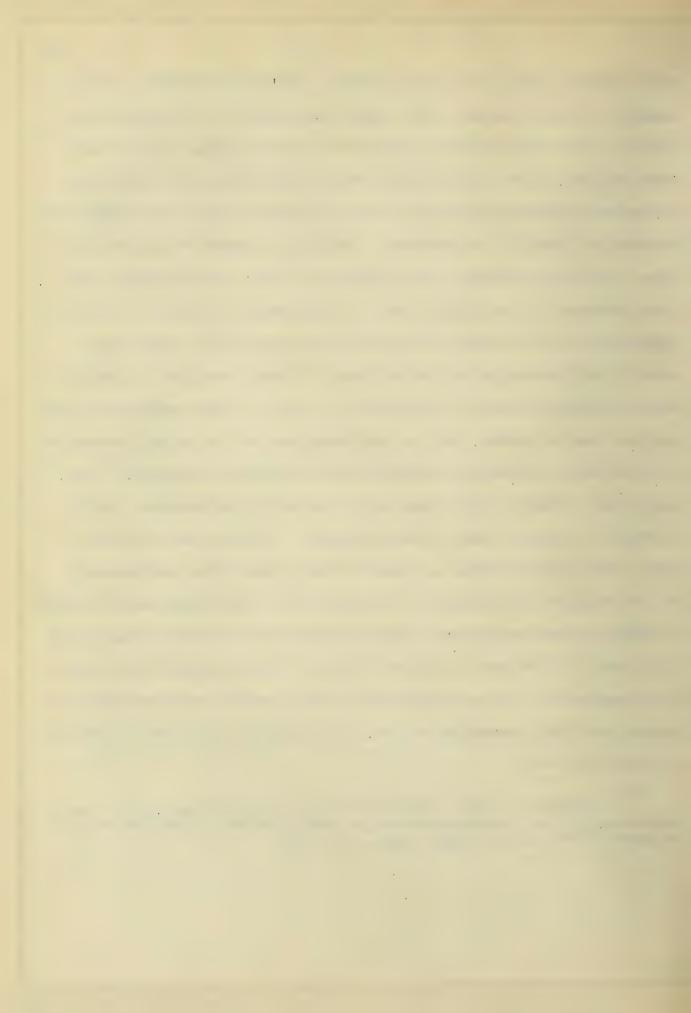
⁴⁹ Mat. Paris, Chron. Maj., II, 171.

⁵⁰ Wm. Malm., Gest. Reg., II, 551.



whom the king had sent to the council demanded the reason for the summons of their master: the legate replied that in seizing the bishops, the king had been guilty of a crime worthy only of heathen nations, such a one as the present age had never witnessed, and added that Stephen would do well to appear and either make submission or justify his conduct. The king's agents withdrew for a time, but later returned with Alberic de Vere, who undertook the legal defense of the king's acts. The bishops, he said, were men dangerous to the kingdom: they had made a tumult in the king's court; they contemplated the delivery of their castles to Matilda when she should arrive in England: in view of these crimes the bishops had been arrested, not as churchmen but as the king's servants who had administered his affairs and had received his pay, bl and, conscious of their guilt they had voluntarily surrendered their castles to escape a more severe penalty. He admitted that the small sum of money found in Roger's castle had been confiscated: but it rightfully belonged to the king, for the bishop had deducted it from the revenue which he should have paid into the treasury of King Henry. The legate replied that all these allegations should have been made in an ecclesiastical court before sentence had been passed and that according to law, the bishops should be reinvested

[&]quot;Rogerius itaque captus sit non ut episcopus, sed ut regis serviens, qui et procurationes ejus edministaret et solidatas acciperet." Wm. Malm., Gest. Reg., II, 553.



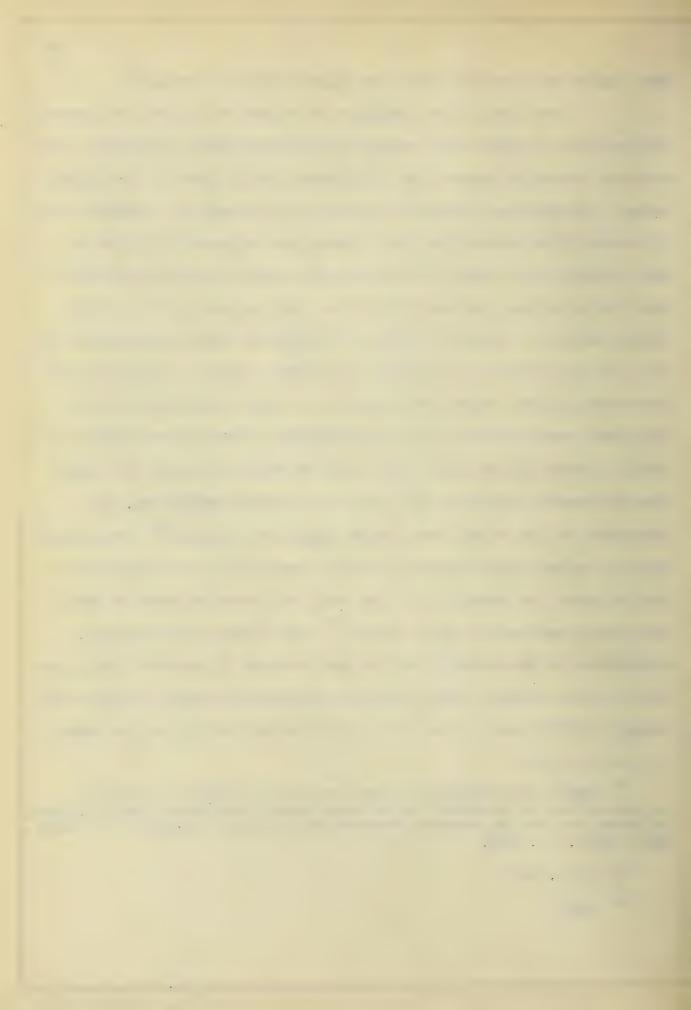
with their property and given an opportunity to plead. 52

After this first exchange of views the council adjourned for two days to await the coming of the archbishop of Rouen. The attitude which he assumed on his arrival was a blow to the bishop's cause. He expressed himself as willing to accept the legate's view if it could be proved that the bishops had a canonical right to hold castles: but even if this were the case it must be admitted that the king was the guardian of the public peace and that all chiefs should be ready to deliver the keys of their strongholds to him for the purpose of securing the common safety. Pressing this advantage Alberic announced that it had come to the ears of the king that some of the council contemplated carrying an appeal to Rome: if they did so they would find it more difficult to return than to depart: moreover the king felt himself aggrieved, and therefore he had of his own accord appealed to Rome. 53 The council broke up after this "because it was a rash act to excommunicate a king without the sanction of the pope, and because some of them saw swords unsheathed about them." 54 The legate and Theobald, archbishop of Canterbury, made a last attempt to recover the property of the bishops; they presented themselves before the king and begged for the sake of his soul and his reputation not to cause

[&]quot;Omnia quae dicuntur contra episcopos prius in concilio ecclesiastico et accusari et an vera essent decuisset inquiri, quam in indenptes contra canonum decreta sententiam proferri." Wm. Malm. Gest. Reg., II, 553,

⁵³ Ibid., 554.

⁵⁴ Ibid.

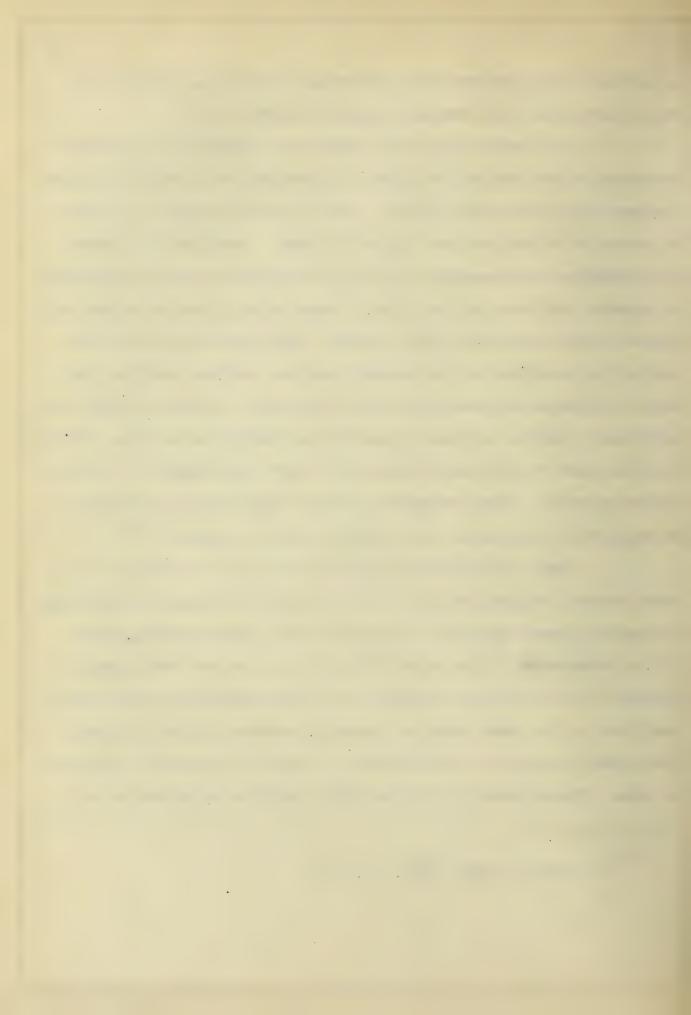


a schism to arise between the church and the state, but the king was obdurate and the churchmen departed unsatisfied.

attitude in the case of the bishops alienated the clergy and after the capture of the king in 1141, they did not hesitate to go over to the side of Matilda for a time at least. Henry held a council at Winchester the same year in which he announced his determination to abandon the cause of the king, a resolution in which he was supported by the majority of the clergy. The legate justified his conduct by pointing out the wrongs that his brother had done the church: bishops had been seized and compelled to give up their possessions; churches had been plundered and abbeys despoiled. Stephen had been deaf to all admonition and at last the judgment of God had fallen upon him. This judgment churchmen were bound to recognize by supporting Matilda as the rightful ruler of England. 55

From the instances related above it is possible to draw some general conclusions as to the development of benefit of clergy during the Norman period. The chroniclers, unfortunately, were little interested in the minor life of the time and their works furnish little positive evidence as to the operation of the criminal law in the lower ranks of society, whether lay or clerical. The higher clergy who transgressed the law were generally involved in some offense against the king which could be interpreted as

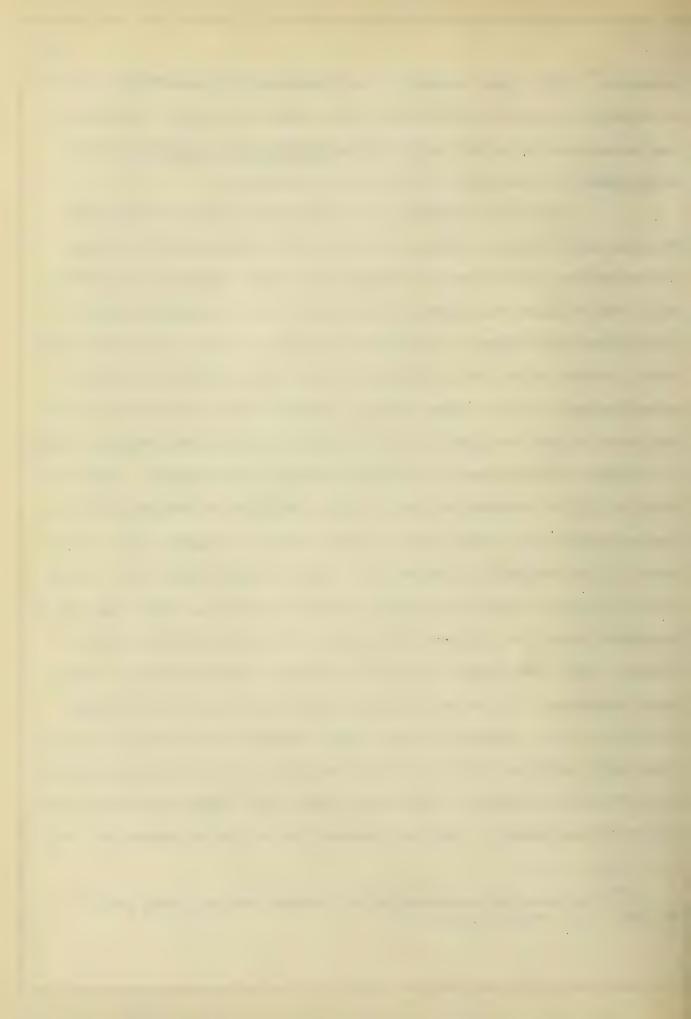
⁵⁵ Wm. Malm., Gest. Reg., II, 575.



treason. For these reasons it is necessary to examine the general conditions existing throughout the period in order to explain the appearance of a well established privilegium clericale in the early years of the reign of Stephen's successor.

While the conquest was in progress it is evident that William gave little attention to clerical exemptions. As far as the execution of the laws concerned the lower clergy, it is probable that William was content to recognize the exemptions made by the Anglo-Saxon kings. The higher clergy who stood in his way were easily swept aside: the majority of them were guilty of simony, concubinage, or some other clerical offense, and the church, which had done so much to place him on the throne, could be depended upon to attend to such cases in a wholly satisfactory manner. Those who were guilty of treason William did not hesitate to punish upon his own responsibility, but even in such cases the penalty was not severe; in the majority of cases the culprits were deprived of their offices and sent into the custody of some bishop or abbot who was dependent upon the king and who could be trusted to hold them securely. With the Norman clergy the problem was different; they were churchmen in good standing with the Holy See, who had aided the king in the past and who had been rewarded for their good service with lands and offices. Their relation to both pope and king gave William the means of avoiding claims that might interfere with the royal supremacy. That the accused had a double character, and

The exact interpretation of treason was not made until 25 Edw. III., stat. 5, sec. 2.



that it was possible to separate the temporal from the spiritual, was the basis on which the kings dealt with the cases of Odo, William, and Roger, and in each of these instances judgment was rendered against the feudal lord and not against the ecclesiastic.

This is particularly noticeable in the case of Bishop William, for when, by judgment of the council he had forfeited his position as ruler of the palatinate of Durham, Lanfranc refused to hear any further accusations against him; he had lost his temporal character and therefore the king had lost jurisdiction. In no case is there a denial of the right of the churchmen, as churchmen, to be tried by their ecclesiastical superiors; the issue is carefully avoided, and the secular power depends upon this technicality for its jurisdiction and on this alone.

In comparison with this immutable position of the secular power the changes that take place in the attitude of the clergy are interesting and important. Churchmen were present at the proceedings against Odo and at the trial of St. Karileph, but they displayed no inclination to support the claims of the accused for ecclesiastical judgment in either case. ⁵⁷ This may be explained by the personal jealousies which resulted from the subordination of their spiritual to their temporal interest and by the attitude which the king had assumed in his dealings with the Holy See.

William, supported by Lanfranc, had carefully defined the limits

⁵⁷ William of Durham appealed in vain for counsel to his fellow bishops. Sym. Mon., Opera Omnia, I, 175. The bishop of Coutances at one time in the trial suggested a committee to discuss the bishop's plea but made no protest when Lanfranc refused to consider it. Ibid., 182.



of papal authority in his kingdom, and, with the king and the archbishop resolved to restrict the influence of St. Peter in England, these temporally minded churchmen were not likely to depend; in ordinary times, upon the power of the pope.

It was in the attitude toward Rome that the English clergy made their first change. The bishop of Durham, hoping to save his temporal position through the agency of his spiritual office, set the precedent of appealing to Rome. Anselm from a wholly different motive followed this example 58 and gradually appeals became more common. Both parties to the discussion at the council at Winchester in 1139 contemplated this proceeding and the king's advocate went so far as to put the thought into words. By the end of Stephen's reign the practice had become so common that the chroniclers commented upon the evils of too frequent appeals. 59 This growth of appeal to Rome is but a single phase of the relationship that was growing up between the papacy and the English church. Other indications may be found in the new activities of the church councils, the appointment of a resident legate, and the growing importance of the canon law. By the end of the Norman period the majority of the English churchmen were looking to the

William of St. Karileph anxious to succeed Anselm as Archbishop was attempting to force the latter to renounce his intention of seeking consecration at the hands of the pope on the grounds that alliance to both William II and Urban was impossible. To this Anselm replied: "Qui, propterea quod venerabilis sanctae Romanae ecclesiae summi pontificis oboedientiam abnegare nolo, vult probare me fidem et sacramentum violare quod terreno regi debeo, assit; et in nomine Domini me paratum invenit ei sicut debeo, et ubi debeo, respondere." Eadmeri, Hist. Nov., 61.

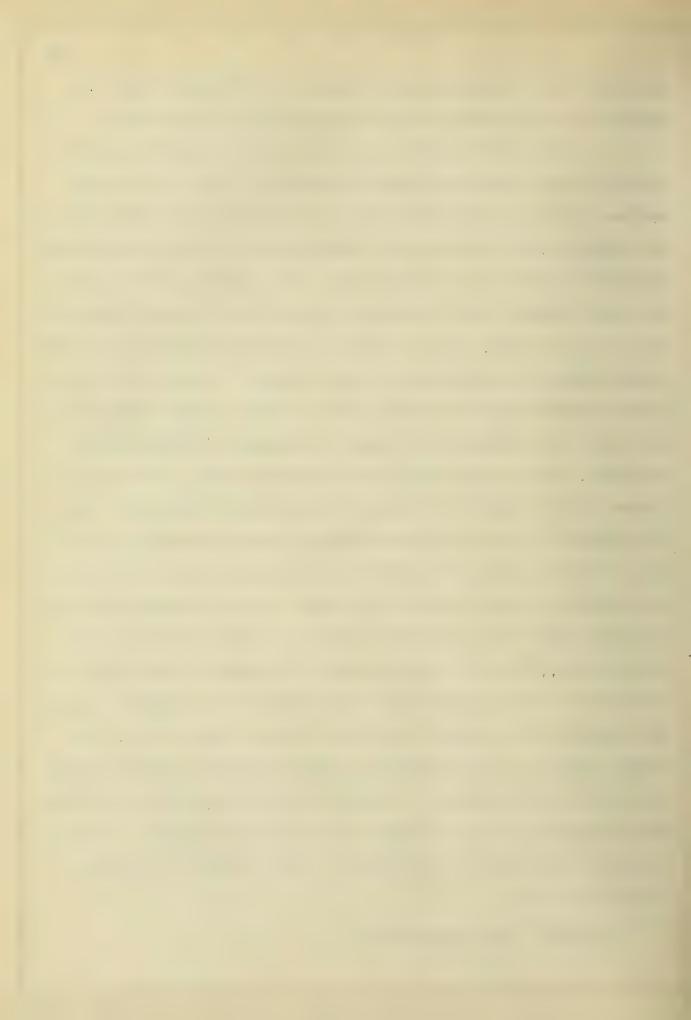
⁵⁹ Hen. Hunt., Hist. Ang., 282.



Apostelic See for guidance, and thus one of the conditions necessary to a firm stand for clerical immunity was fulfilled.

Even more important than the alliance with Rome was the growth of unity among the English churchmen. With the death of Lanfranc justice disappeared from the government established by the Conqueror, but the strength remained and all that strength was exerted to extort money for the king. The weight of this oppression bore heaviest upon the church and the common burden put upon them led the clergy, high and low, to develop a class feeling that became steadily stronger as the years passed. It was not checked by the orderly reign of Henry I, but in fact received fresh impetus. The very regularity of Henry's government afflicted the churchmen, both as spiritual and as temporal lords, and they complained at the council of London in 1136 of the wrongs that they had suffered. The investiture struggle between Anselm and the king aided in binding the churchmen together as well as in bringing them into closer relation with Rome. Some of Henry's own appointees refused to accept consecration at other hands than the archbishop's, 60 and the feeling that the primate's cause was the cause of the church spread into all classes of the English clergy. Thus harassed from without and drawn together from within, the clergy had at the time of Henry's death attained a greater degree of unity than ever before. Stephen's doubtful claim to the throne made it possible for the clergy to fix his acquiescence to their demands as the condition precedent to their support. The king

Eadmeri, Hist. Nov., 145-7.

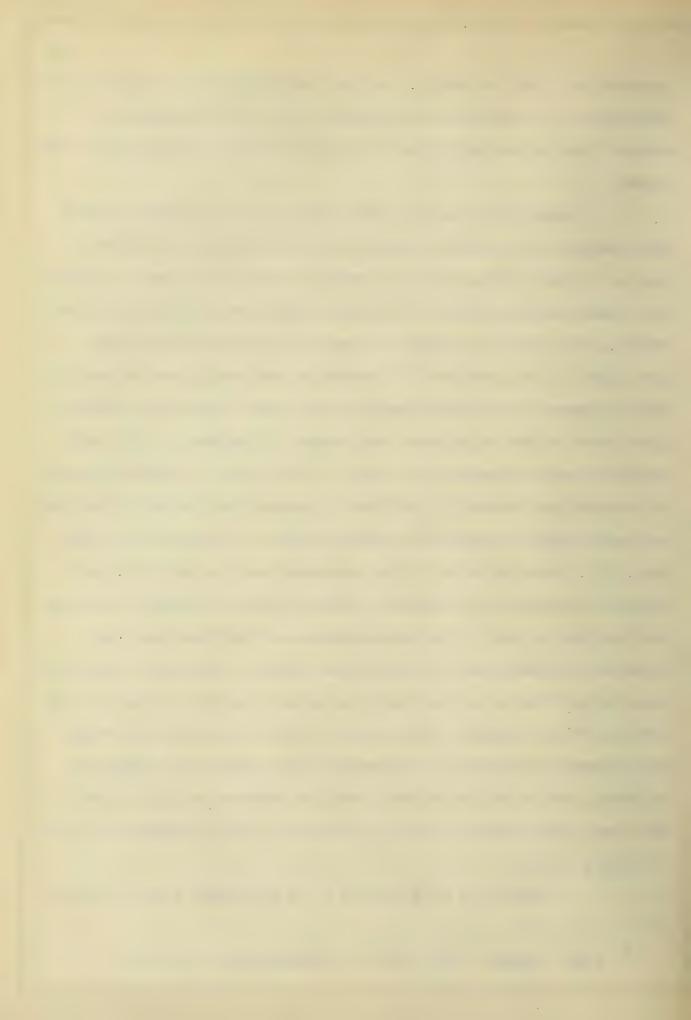


conceded all that was asked, and the church was able to enter into the period of disorder that followed with a consciousness of strength and a knowledge that its power had been recognized by the state.

Almost immediately after the council of London England was plunged into a state of anarchy which lasted for eighteen years. In this struggle of the greedy nobles for power and glory, the common people, if those of London, York, and Bristol are excepted, took little part save to endure in silence the wrongs done them by both parties. 61 Meanwhile government was reduced to the minimum and the church was the only power that stood firm in opposition to the turbulence that swept all England. With royal justice almost suspended the courts of the church steadily gained in strength and authority and firmly secured the jurisdiction that had been granted them by the secular power. They went even furthen, for, since affairs of the commoners must be settled, and since the machinery of temporal justice was in disorder they were able to play a part in the determination of matters that had hitherto been reserved to the secular courts. Thus the church became the arbitrator of the temporal as well as the ecclesiastical affairs of the people. With secular law enforcement at a standstill there was nothing to interfere with exercise of complete criminal justice by the church over its members and the church must have taken entire control of the trial and punishment of the offending clergy.

It cannot be said that all the churchmen stood for law

⁶¹ Gest. Steph., 1142 (Howlett, Chronicles, III, 98).



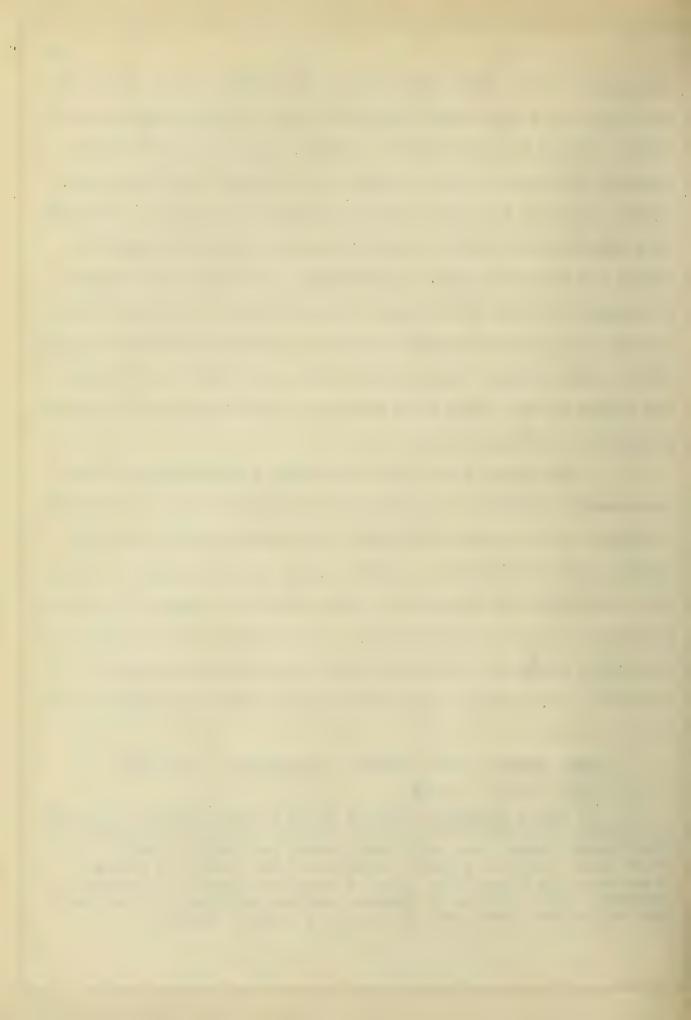
enforcement. The chroniclers accuse the bishops of all sorts of evil, beginning with fear of secular powers and a consequent failure to enforce the rights of the church, and ending with the accusation that some of them engaged in pillaging expeditions and, having shared in the booty, laid the blame at the door of others. This may have been true in isolated cases, but the far greater number did their full duty as churchmen. That they were worldly is unquestioned but they clung to their spiritual power as firmly as they did to their temporal position, and with the united support of the lower clergy, they carried on the work that was to bring the church to the position of power and influence that it occupied at the end of Stephen's reign.

The church itself did not escape persecution and there are numerous records of the pillage of churches and the violation of abbeys by the lawless nobility. The Peterborough chronicler relates that "they forbore neither church nor churchyard but took all that they found therein, and then burned the church altogether. Nor forbore they a bishop's land, nor an abbot's, nor a priest's but robbed monks and clerks and every man another wherever he could." If, however, the number of outrages 64 are compared with

⁶² Gest. Steph., 1142 (Howlett, Chronicles, III, 100).

⁶³ Saxon Chron., II, 230.

⁶⁴ The Gesta Stephani mentions quite a large number of robberies committed by the nobles during Stephen's reign. St. Marys, St. Ethelfrida, Ramsay, are religious houses mentioned by name, in other cases only the general location of the crimes is noted. Gloucester, De Mandeville, Milo of Hereford, John the Marshall, Geoffery Talbot, Walter de Pinkney and Reginald, son of King Henry, are the men who draw down the author's deepest curses.

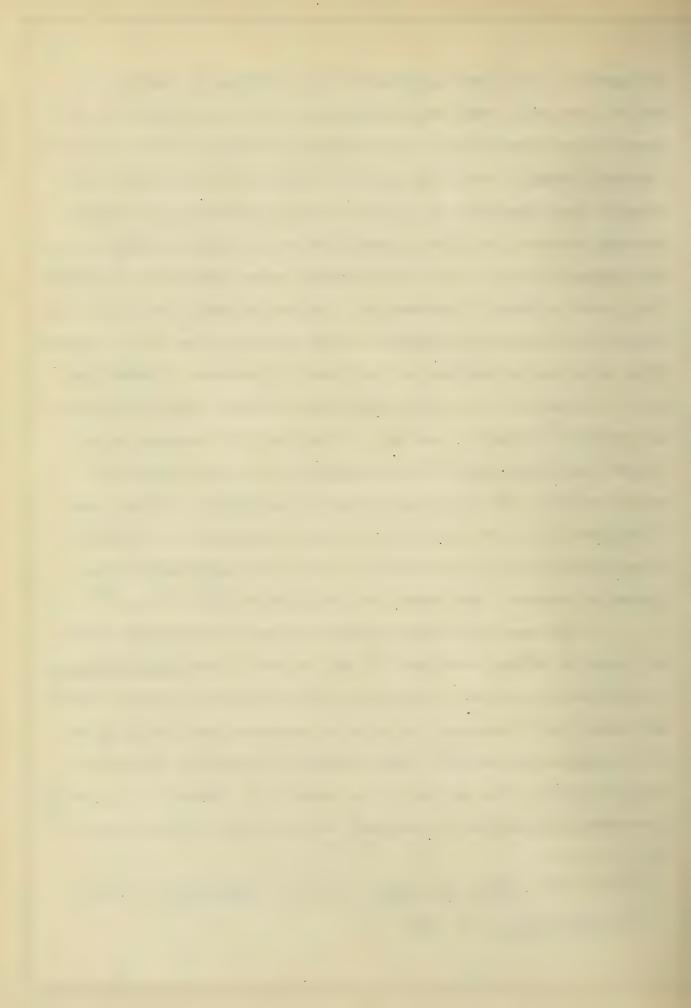


the number of churches and monasteries existing in England it must be concluded that the sufferings of the church were not as great as the overemphatic chroniclers would have us believe. Had a general assault been made upon the church it is unlikely that it would have developed as it did either in power or in wealth. Newburgh relates that more monasteries were founded in England during Stephen's reign than in the hundred years preceeding: 65 surely this is not a sign of oppression. The Anglo-Saxon chronicle also presents an interesting example of the growing power of the church. After relating the sorrows of the time it proceeds: "Abbot Martin wrought on the church and added thereto lands and rents. and greatly endowed it, and had it provided with vestments and brought the monks into the new monastery with great worship. And he got back the lands that powerful men held by force," and it follows this with a list of the additions made to the abbey's lands closing with a statement that the abbot made many monks. planted a vineyard, and "made the town better than it was." 66

Nor was the church without the power to protect itself and in spite of the testimony of the author of the <u>Gesta Stephani</u> it is evident that the bishops did not hesitate to use that power. The council of Winchester scrupled to excommunicate the king but it is certain that men who were actually as powerful suffered at numerous times. The canons of the council of London in 1143, which threatened excommunication against all who laid violent hands on

⁶⁵ Wm. New., Hist. Rer. Ang. (Howlett, Chronicles, I, 53).

Saxon Chron., II. 230.



clerks, had a quieting effect on the turbulent nobles; ⁶⁷ and there are instances of plunderers being forced to return their booty to the churches from which it had been taken. ⁶⁸

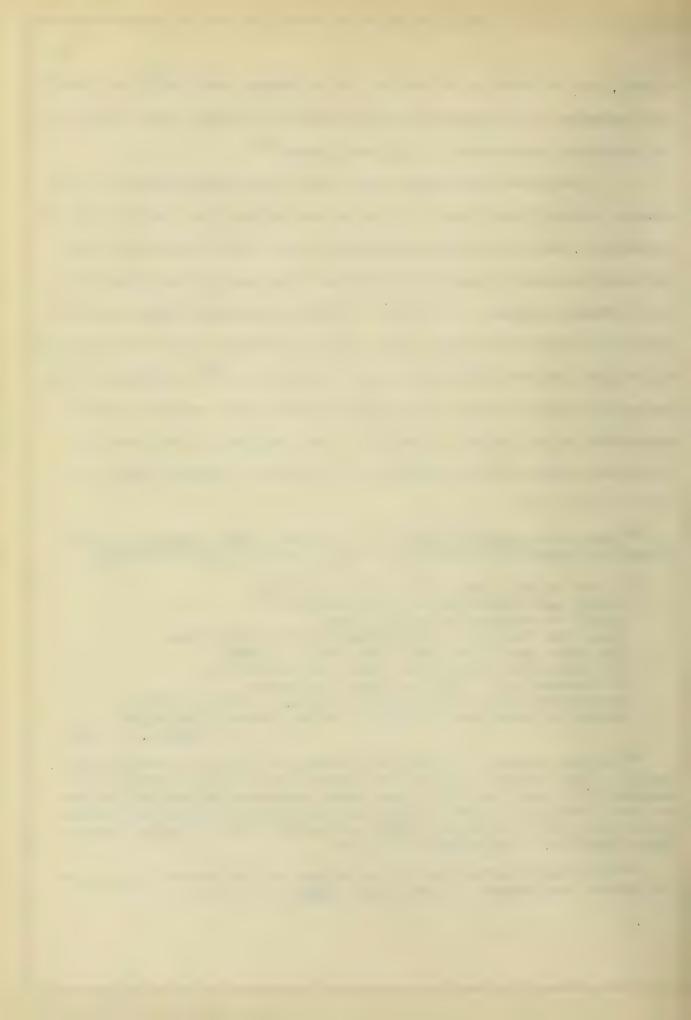
Moreover the church won itself the secure support of the commons during this time. To the church alone they could trust for protection, and the churchyards were filled with the hovels that had been erected by Englishmen driven from home by the fear of their Norman masters. In times of battle the church was the refuge of the terror stricken commoners who crowded the sacred grounds and filled the buildings with their belongings. Throughout this period the church held a position of neutrality, as far as was consistent with its own interest. When wronged by one party it threw the weight of its support to the other in order that its

⁶⁷ Mat. Par., Chron. Maj., II, 175. Rog. Hov., Chron., I, 206. Pierre de Langtoft vividly points out the evil and the remedy:

[&]quot;In the eighth year that Stephen reigned,
Clergy and laymen were on an equality,
Knight or esquire, who had power,
Took from the holy church whatever he could take.
The pope heard the complaint, sent a legate,
The bishop of Winchester, who held a council
At London in St. Paul's, made his decree,
Whoever touched, with violent hands, a clerk ordained,
Should be absolved of that by nobody except the pope."
Chron., I. 488.

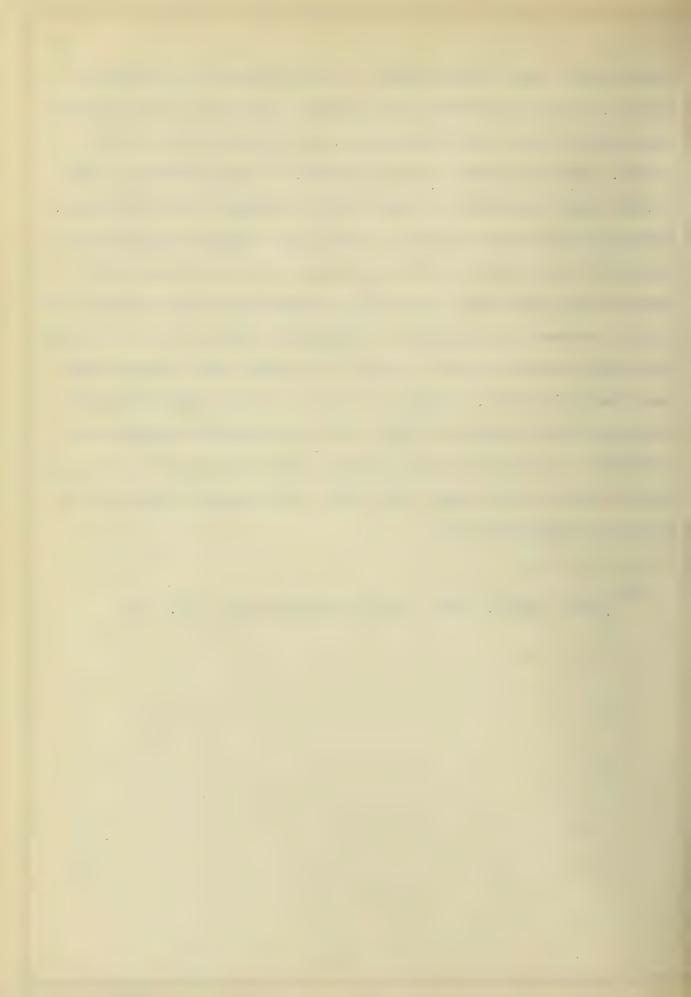
Robert, bishop of Hereford, forced Earl Milo to return the goods of the church to "the last penny" and had the damages assessed by a jury. But Milo died under excommunication for he had to steal from one church to pay another and as long as sacrilege was on his soul the bishop would not absolve him. Gest. Steph., 1143 (Howlett, Chronicles, III, 102).

⁶⁹ See the description of the church at Worcester during the battle at that place. Flor. Wig., Chron., II, 118.



Stephen, but when he broke his promises, "because of evil counsel, which perverts the best disposition, and because of his necessities, which were above law and reason," the churchmen turned to what they hoped would be the better treatment of Matilda; and, finding the empress even less pliable than Stephen they later returned to their alliance with the king. But at all times the church strove for peace and while it labored for this ultimate end it did its best to alleviate the suffering caused by war. It was the steady pressure that it exerted for years that brought about the final settlement, and when peace was at last established the church had won a position from which it was able to combat successfully the attempts of the secular power to force it or its ministers back upon the plane which they had occupied before the beginning of Stephen's reign.

Gest. Steph., 1136 (Howlett, Chronicles, III, 17).



Chapter III

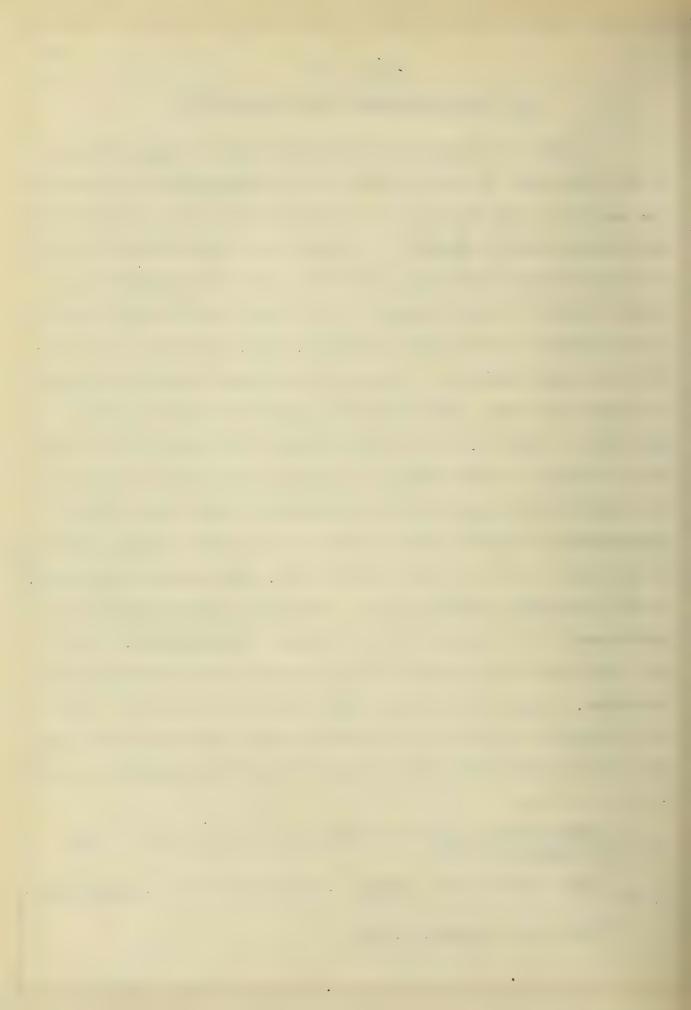
THE STRUGGLE AGAINST LAY ENCROACHMENT

After the treaty of Wallingford Henry of Anjou returned to the continent to busy himself with the restoration of order and the recovery of the demesne lands which had been given away by both King Stephen and the empress. Stephen turned his attention to the reduction of the adulterine castles and the reëstablishment of a decent respect for law in England. The king's efforts were reasonably successful but he died October 25, 1154, before any great results had been obtained. Six weeks later Henry arrived in England to assume the crown. The task that presented itself to the new ruler was a huge one, but he was certain of the support of a large part of England in his efforts to repress anarchy and to restore the crown to the plane that it had occupied in the days of his grandfather: he had the full support of the people who had suffered at the hands of their lawless masters and, what was more important. he had the support of the church. It was the church that had been instrumental in bringing about the treaty of Wallingford. and it was the Archbishop Theobald who had kept the peace during the interregnum, a time that was ordinarily marked by disorder. The real opposition to an orderly government came from the lawless nobles and from the mercenaries which both sides had employed in the

Roger Hovedon says that Henry was made justiciar for all England. Chron., I, 212.

Ibid.; Gerv. Cant., Opera, I, 156; Rad. Diceto., Opera Hist., 1, 296.

³ Gerv. Cant., Opera, I, 159.

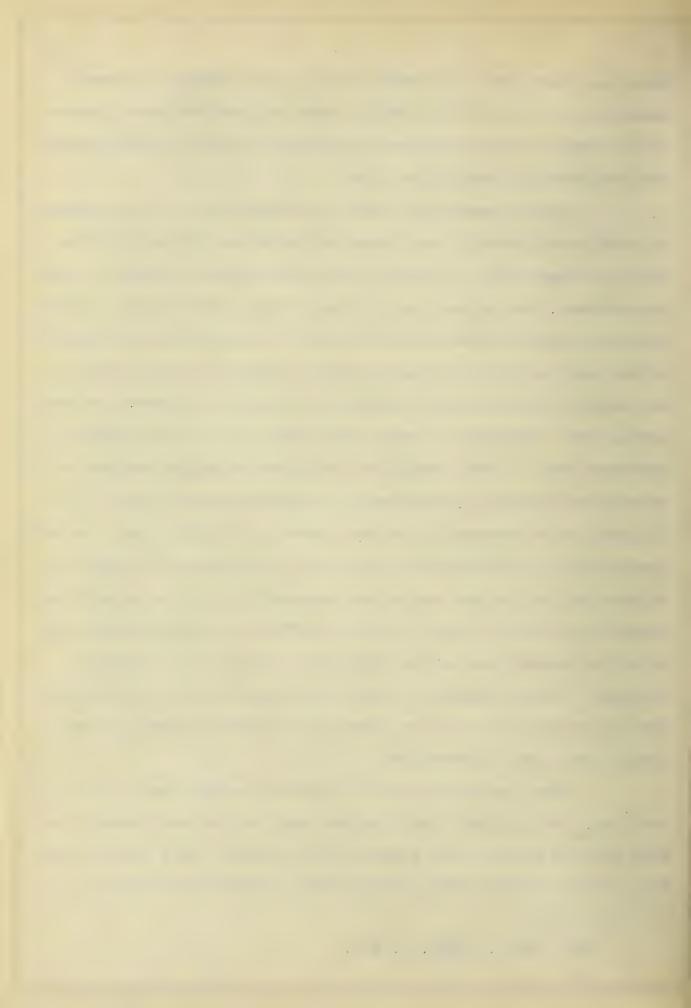


preceding years; but the Norman nobility had suffered a severe bloodletting in the past nineteen years and moreover were incapacitated from united opposition to the king by the personal hatreds that had grown up during that time.

Almost immediately after the coronation, at the instance of Archbishop Theobald, one Thomas of London was elevated to the office of chancellor. This man, the son of Gilbert Becket, a London merchant, had entered the service of the archbishop as a clerk in minor orders and had proved his worth on more than one occasion. He had been entrusted with an important embassy to Rome which he had managed to his master's entire satisfaction. Moreover he had already done something to merit royal favor, for he had taken an important part in the assembly of churchmen which had refused to crown Count Eustace in accordance with King Stephen's wish. In the position of chancellor he soon proved to the king that the recommendation of the archbishop had been well-founded; he aided in suppressing the lawless nobles and successfully led an expedition against the king's younger brother Geoffrey, who had attempted to seize the possessions on the continent which were his rightful heritage. In his manner of living the chancellor was a man after the king's heart and the two became fast friends as well as partners in the work of government.

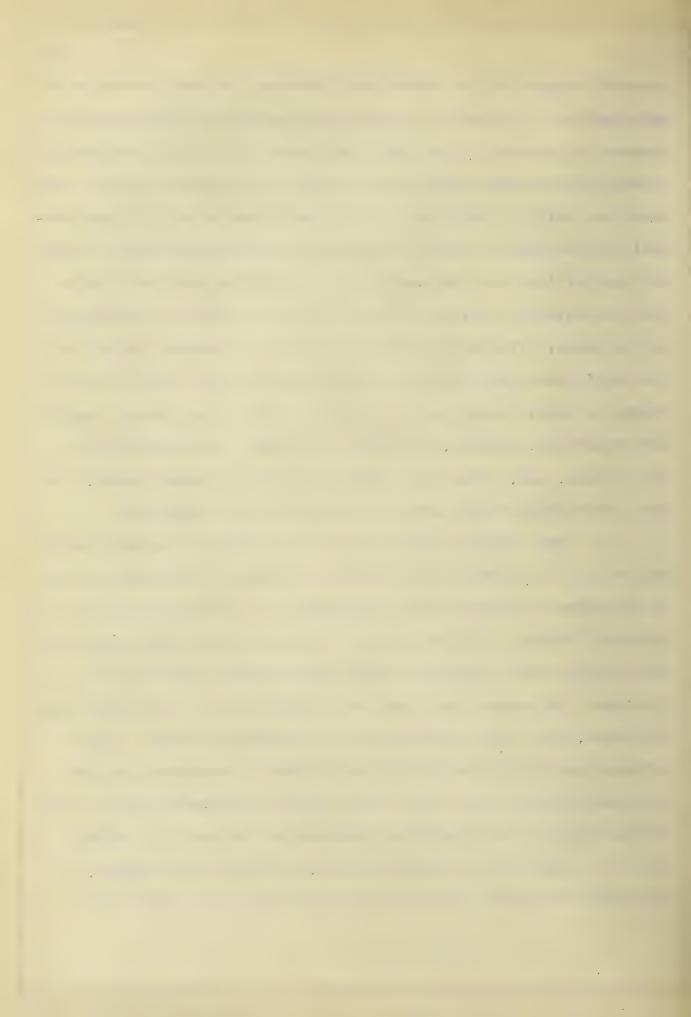
When the royal power was securely established over the nobility, the king felt the time had come for the settlement of a more serious problem, the status of the church. This question had been left in abeyance for several years, probably because the

⁴ Gerv. Cant., Opera, I, 150.



powerful support of the church was necessary to Henry in his other undertakings. The death of Archbishop Theobald in 1161 seemed to present an opportunity for easy settlement. The king undoubtedly hoped for a man who would play the part of a Lanfranc while he assumed the roll of a William. With such a plan in mind it was natural for the king to turn to Becket; the latter had proved himself able and willing in other matters and therefore could be trusted with the work of leading the church into the paths of submission to the state. The subject was broached to the chancellor but to the king's surprise he was not so pleased with the offer; he preferred to remain where he was without divided allegiance. Despite his objections, however, the choice was made, the assent of the pope gained, and, after being ordained priest, Thomas Becket, became archbishop of Canterbury and primate of all England.

was not to be expected, and in truth it did not: the better class of churchmen objected to the appointment of a worldling as their spiritual father; the more secular minded prelates were aggrieved that the son of a tradesman should become their superior; the nobles were displeased that a man who rivaled them in position, magnificence, and royal favor should be increased in power. But a surprise awaited England from king to humble churchman: the new archbishop began to lay aside the things of the world and to turn to those which that generation regarded as the mark of a saintly life. He abandoned his costly habits, he dined with beggars, he mortified the flesh; the sincere layman had become the sincere



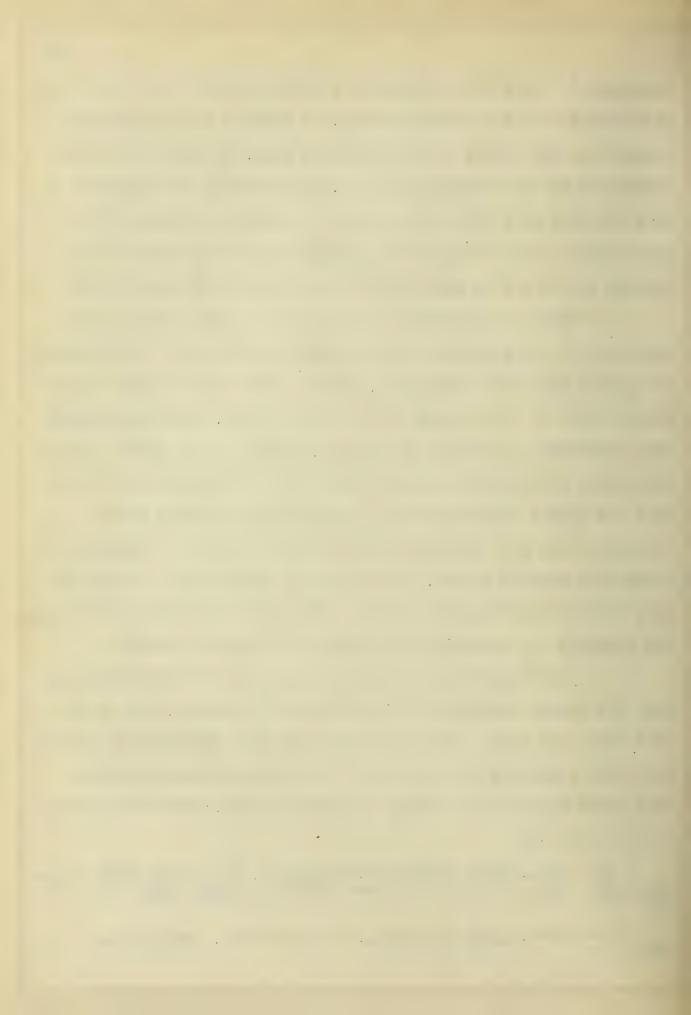
churchman. His first acts came as a severe shock to the king: Thomas resigned from the chancellorship, he gave up a vast number of pluralities and forced others to do the same, he strove to resume control of all the lands of his see, and worst of all he showed by word and deed that he did not intend to occupy the place in the royal scheme that the king had intended; he was the head of the English church and he would resist an attack on its privileges.

justified in his attack on ecclesiastical liberties. The frequency of appeals had grown enormously, church courts had extended their jurisdiction in civil cases to the utmost limit, criminous clerks were constantly increasing in numbers, thanks to the gentle treatment which they received at the hands of the ordinaries; it seemed that the church had established an imperio which threatened the most important functions of the state. Resolved to check this growing danger, the king chose as the point of his attack the most indefensible and the most abused of church privileges, the immunity of ecclesiastical felons from secular justice.

Concerning this the king had heard much that displeased him; his judges complained of the failure of justice, and he was told that more than a hundred murders had been committed by clerks since the beginning of his reign. Even the churchmen admitted that there was an evil element among the clergy, "devilish workers,

Wm. Cant., Vita (Robertson, Materials, I, 10-12); Fitz Stephen, Vita (ibid., III, 37-40); Joan. Saresb., Vita (ibid., II, 306-309).

Wm. New., Hist. Rer. Ang., 1163 (Howlett, Chronicles, I,



clerks in name but of Satan's breed" who "appeared at this time to be ensuared in public crimes more than usual."8 It appears also that the prelates were aware of the situation and felt that they were somewhat at fault for they began to lay more severe penalties. degradation, imprisonment, and exile, upon the guilty clerks that were delivered to them for trial and punishment. Yet, in spite of their efforts, crime upon crime was brought to light to the disgrace of the clergy and to the utter discredit of the courts of the church. A priest in the diocese of Salisbury was accused of homicide and delivered to the bishop: he denied his guilt and was allowed to attempt a canonical purgation. in which he failed. Archbishop Thomas was appealed to and fixed the man's punishment at degradation and confinement in a monastery for the rest of his In the diocese of Winchester a clerk murdered the father of a woman whom he had betrayed: this time the culprit was delivered to the bishop through the agency of the archbishop. "lest he be given over to the king's justice." Again one of the primate's own clerks was accused of theft from a church and the king wished him delivered to secular justice; but Thomas took charge of the case himself and ordered the man degraded and beaten. 12 In each

Herb. Bose., Vita (Robertson, Materials, III, 264).

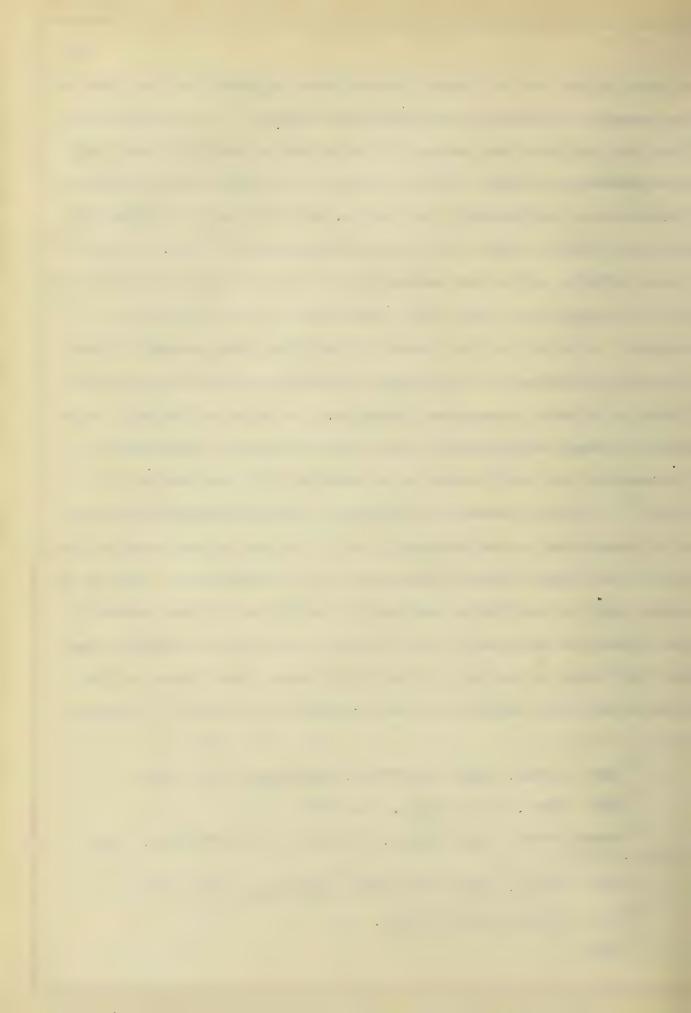
⁸ Edw. Grim , Vita (ibid., II, 385).

Herb. Bose., Vita (ibid., III, 265); Fitz Stephen, Vita (ibid., 45-46).

¹⁰ Herb. Bose., Vita (Robertson, Materials, III, 264).

¹¹ Fitz Stephen, Vita (ibid., 45).

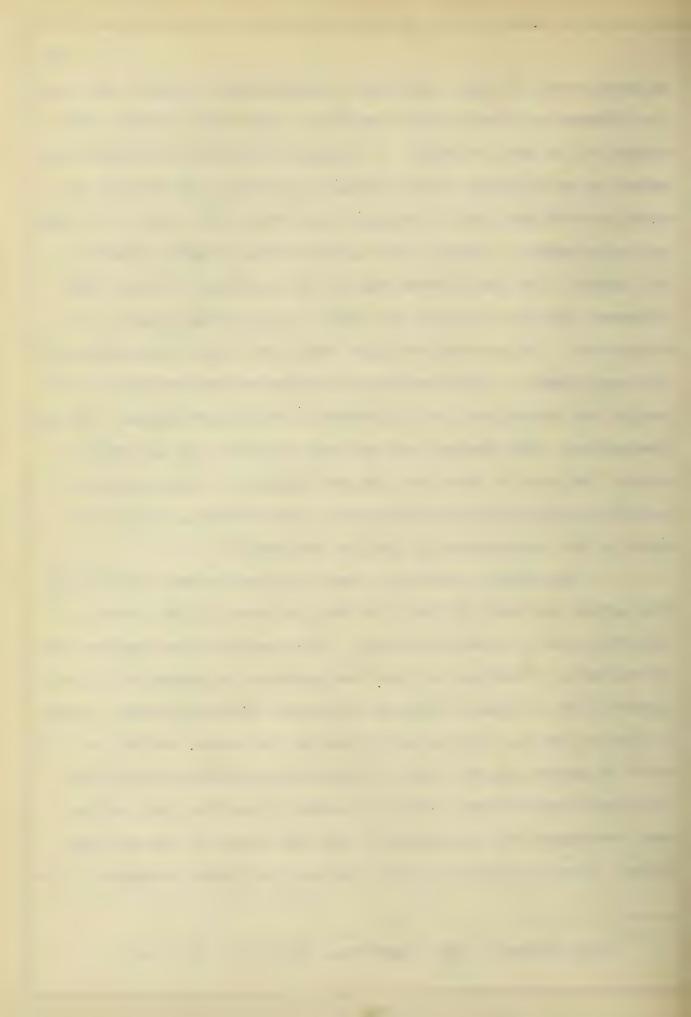
¹² Ibid.



of these cases the king had been interested and in each he felt that the offender had been lightly punished. His anger had also been aroused by an earlier trial. A citizen of York had personally appealed to the king for remedy against a certain dean who had seduced his wife and had at the same time stolen his money. The case was tried before a church court and the woman cleared herself of the charge. The dean however was not so successful and at last confessed that he had given the whole of the stolen money to his archdeacon. The sentence was that the money should be restored to the complainant. Then Richard de Lucy who was present asked what penalty was to be paid for the breach of the king's peace. The ecclesiastical judge denied that any was due since the man was a clerk. The news of this decision was carried to the king who announced an appeal but later abandoned his intention, though his anger at the miscarriage of justice remained. 13

The affair that was to set the great Becket controversy into action was that of Philip de Broi, a canon of the church of Bedford in the diocese of Lincoln. This man had been arrested for the murder of a soldier and had been admitted to purgation by the bishop of the diocese. Sometime afterward Simon Fitzpeter, a royal justice who had a personal dislike to the canon, called him to court to answer for the crime. Philip replied that he had been tried and acquitted and ended his speech by calling the justice some hard names for attempting to try him twice for the same offense. Simon complained to the king and the latter demanded of the

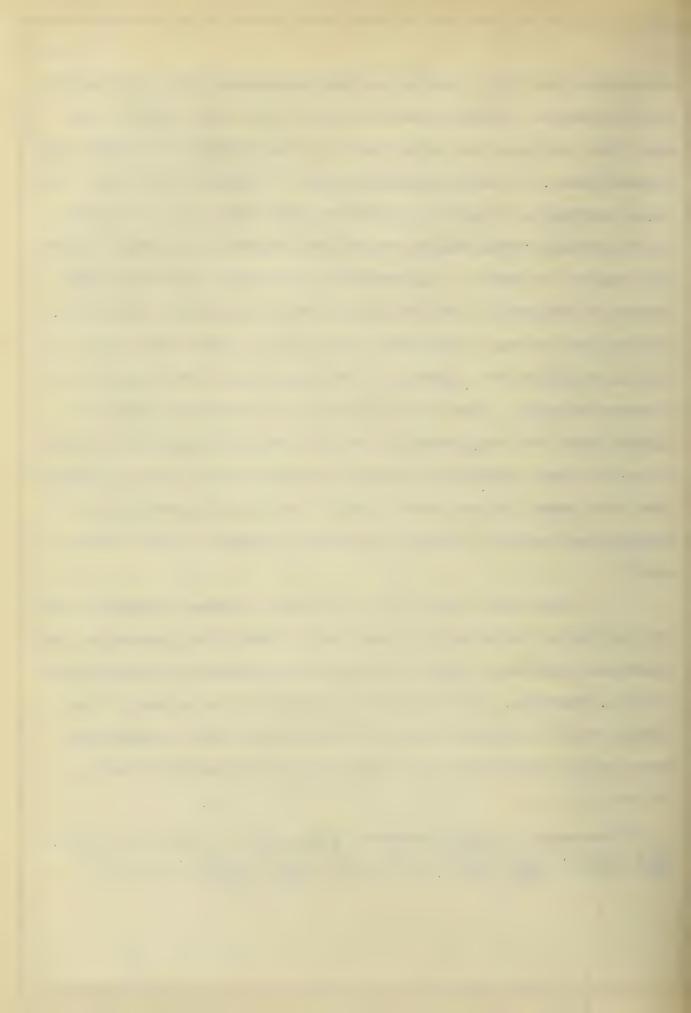
Fitz Stephen, Vita (Robertson, Materials, III, 43).



archbishop that "full justice be done concerning both the homicide and the insult." Becket answered that if the king wished to be sure that the canon was submitted to a fair judgment he should come to Canterbury, or send representatives, to oversee the trial. reply angered the king but at last he sent some of his followers to the archepiscopal church, where they renewed the charge of murder against the canon. The archbishop refused to entertain this charge on the ground that the accused had already been acquitted. but for the contempt Philip was sentenced to forfeit the income of his lay holdings for a period of two years and to be subjected to a severe whipping. The king felt that this punishment was far lighter than the canon deserved "and he falsely accused the bishop of having shown leniency to please the archbishop," and he demanded that they swear "by the eyes of God" that they had made an honest decision and had not favored the accused because he was a churchman.14

The affair finally led the king to summon a council which met in 1163 at Westminster. Here Henry stated his charges and proposed his remedies. After accusing the archdeacons of unbecoming conduct, barratry, and extortion he turned to the crimes of the clergy which he declared were so frequent that they menaced the peace of his whole realm, and with which he intended to deal

¹⁴ Wm. Cant., Vita (Robertson, Materials, I, 12); Edw. Grim, Vita (ibid., II, 374-376); Herb. Bose., Vita (ibid., III, 265); Auct. Anon., Vita (ibid., IV, 24-25); Thos. Saga, I, 145-147.



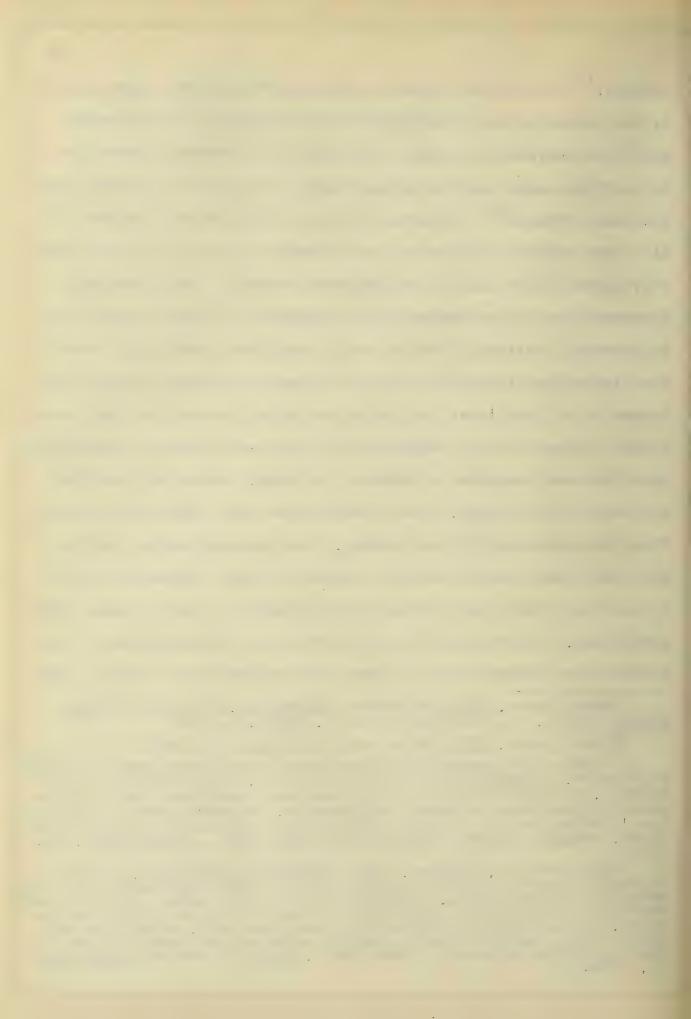
sternly. 15 With this in view he proposed that clerks found guilty by the ecclesiastical courts should be delivered to the secular arm to be punished as laymen. To this the churchmen opposed the rule of the canon law that a man should not be twice punished for the same offense. 16 Evidently the king had expected a refusal of his first proposition for he now shifted his ground and asked that they agree to the customs of his grandfather. 17 The archbishop apparently had no assurance as to the extent of these customs for he answered cautiously that he would obey them "saving his order." The king expostulated that he only wished the clergy to obey laws "known to be instituted for the salvation of orders," but the archbishop and each of his suffragans in turn save Hilary of Chichester made the same response as before. The king, furious at the firm attitude of the clergy, first assured them that there was no escape from the acceptance of the customs, then becoming calmer pointed out that these customs had been obeyed by their consecrated predecessors and that they should therefore have no fear of them. The archbishop, "not wishing to set his foot in a slippery place," responded that he would obey no law that opposed divine law. 18 Upon

¹⁵Herb. Bose., Vita (Robertson, Materials, III, 266); Sumna Causae (ibid., IV, 201); Gerv. Cant., Opera, I, 175.

¹⁶ Auct. Anon., Vita (Robertson, Materials, IV, 95).

^{17&}quot;'Ne nobis imperantibus tepescente justitia malorum insolentia se dilatet, voluntatis meae est et consilii, ratio quoque id ipsum astruit, ut consuetudines et ligitima quae traditurus sum, et quae sancivit avus meus, a vobis confirmentur, ad pacem populi custodiendam.' 'Salva ordinis nostri professione,' respondent una voce pontifices,'vestris legibus obtemperamus.'"Edw. Grim, Vita (ibid., II, 376).

^{18&}quot;Quibus ille, 'Legibus,' ait 'regni volo obediatis, et eas confirmetis, quae ad ordinis salvationem noscuntur institui.'" "At venerabilis archiepiscopus, suspectum habens pacis nomen, ne forte lateret sub melle venenum, sciensque non esse tutum in lubrico ponere pedem, et tenebris circumfusum proximare periculo, constanter respondet regi, nullis se velle legibus obtemperare, quae divinis probentur legibus adversari; "Edw. Grim, Vita (Robertson, Materials, II. 376-7).



this reply the king, overcome by anger, rushed from the room and the meeting broke up in disorder.

Was the work of Becket, and upon the advice of Arnulph, bishop of Lisieux, began the formation of a party in opposition to the archbishop. Contests over authority and personal dislike were used to detach Roger of York, Robert, elect of Hereford, Gilbert of London, Robert of Lincoln, and other prelates from the primate's cause. 19

The pope was prevailed upon to send a legate to enjoin obedience upon the archbishop and even those who were friendly to Becket were induced to advise him to yield to the wishes of the king. As a result of this pressure the archbishop at last appeared before the king at Woodstock and promised to accept the customs. Immediately upon the receipt of this promise the king summoned a great council to meet at Clarendon where final disposition was to be made of the matter. 20

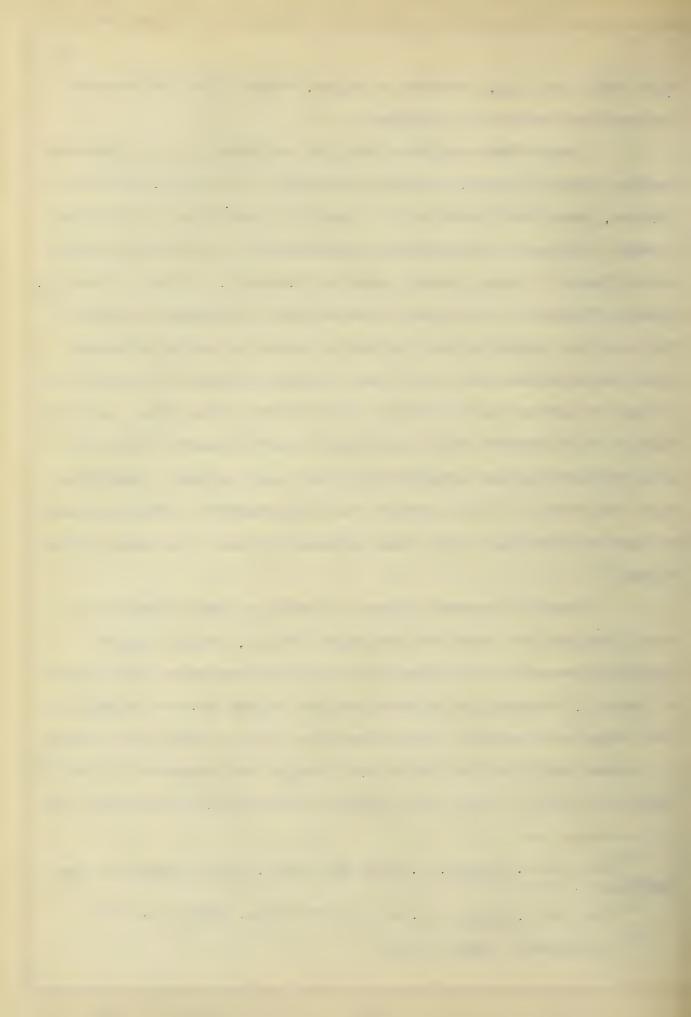
When the assembly began its session John of Oxford, a royal chaplain who acted as presiding officer, called upon the churchmen present in the name of the king to recognize the customs of Henry I, "inasmuch as dissentions had arisen between clerks and the judges and magnates over recognition given without good reason to customs and liberties which were unequal and abhorrent to God."

Becket felt that he had been duped and repented of his promise. He

Rog. Hov., Chron., I, 220; Wm. Cant., Vita (Robertson, Materials, I, 14).

²⁰ Rog. Hov., Chron., I, 221; Gerv. Cant., Opera, I, 176.

John Oxen., Chron., 54.

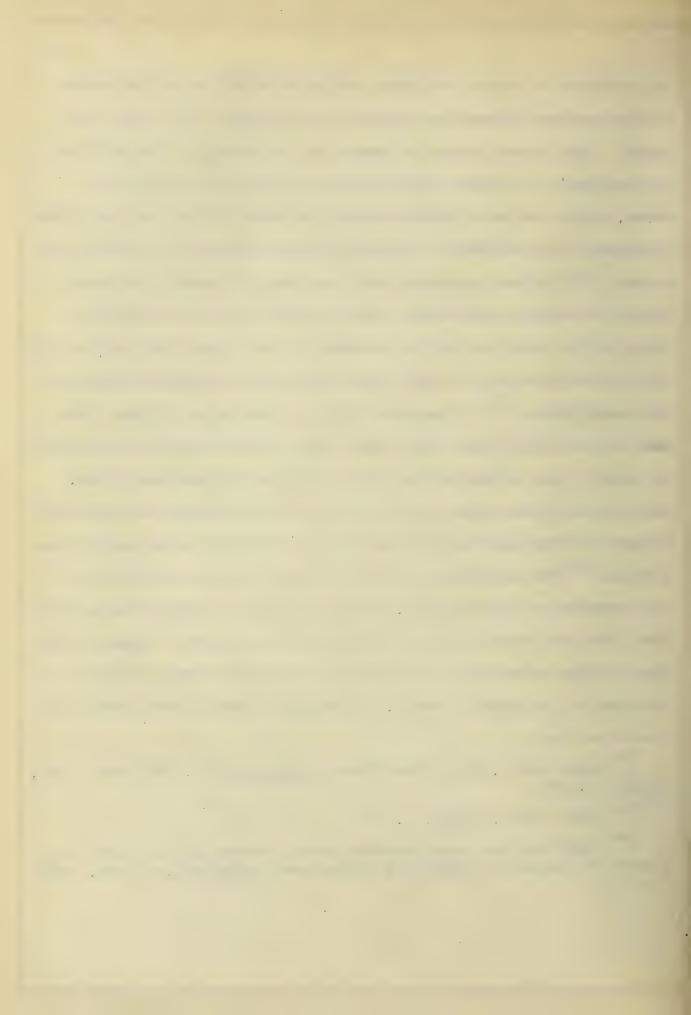


did his best to avoid the issue and by so doing roused the wrath of the king who threatened him and his followers with exile and death. This threat caused a tumult in the council. The attitude of the king's followers was menacing and the bishops began to waver, while the more obscure among the clergy "fled here and there withdrawing in the face of danger that they feared was already imminent."22 Nobles, prelates, and templars all begged the archbishop to submit; and Becket finally moved by their entreaties "came to the king and in the presence of the clergy and people said that he would submit to those laws which the king called those of his grandfather." 23 It appears that the substance of those laws was not actually known, for Henry first called upon the lay nobles to recall them to memory that they might be written down: then. meeting resistance from the clergy to this proceeding he appointed Richard de Lucy and Joscelin de Baliol to determine and codify the customs. 24 The archbishop refused to seal the constitutions as was demanded by the king and, after accepting a copy of them, withdrew from the council with a few personal followers. Remorse overcame him for consenting in any way to accept the cus toms and he returned to Canterbury, where, suspending himself from service at

Auct. Anon., Vita (Robertson, Materials, IV, 33); Rog. Hov., Chron., I, 221.

²³ Gerv. Cant., Opera, I, 178.

These two men were excommunicated because of the part they played at Clarendon. Epistolae (Robertson, Materials, V, 388, 390).

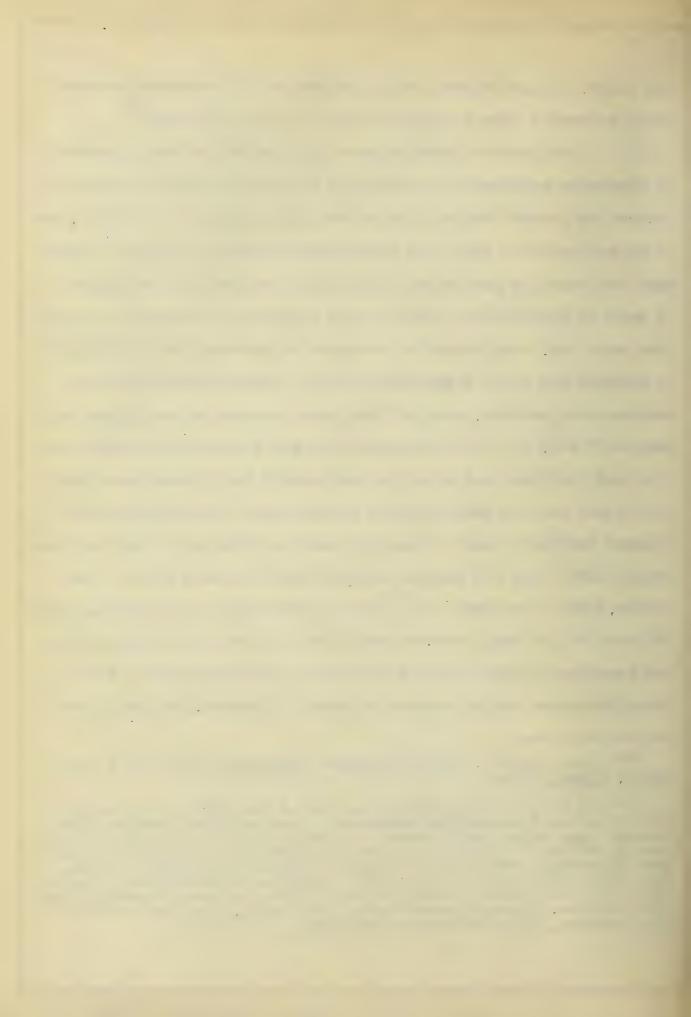


the altar, he gave himself up to prayer and self-imposed penance until he should have received absolution from the pope. 25

The sixteen constitutions that Becket refused to accept at Clarendon represented to Henry II the measures which should be enacted to assure the position of the state against the church, and it is not unlikely that they really represented the king's idea of what had been the law in the time of his grandfather and before. It must be admitted also that in the majority of instances the customs were old; even Becket's strongest supporters find difficulty in denying the fact. Fitz Stephen says: "Never before had these customs been written, nor had they ever existed in the kingdom of England: "but, as if in extenuation of his statement, he adds that even had they been set down the king should have "taken care that he did not rely on antiquity and usage rather than upon justice, because the Master said, 'Keep my laws' and 'Woe unto them who make unjust laws. 'Also the Master is never known to have said. 'I am custom,' but 'I am truth.'"26 Grim gives the impression that the officers of the king assured Becket that no record of the customs had been kept; later in his account the archbishop admits that HenryI took some action against clerical offenders, but only once

²⁵ Joan. Saresb., <u>Vita</u> (Robertson, <u>Materials</u>, II, 311); Gerv. Cant., Opera, I, 181.

^{26 &}quot;Et alia in hunc modum, quae palam cum sacris canonum constitutionibus dissonantiam resonabant. Sed scriptae nunquam prius fuerant, nec etiam omnio fuerant in regno Angliae, hae consuetudines. Et etiam si fuissent, ne de antiquitate et usu potius quam de jure niteretur, rex, in illis spuriis statutis firmandis, attendere debuisset quia Dominus dicit, 'Leges meas custodite.' Item illud, 'Vae qui condunt leges iniquas.' Item, nusquam invenitur Dominum dixisse, 'Ego sum consuetudo;' sed dixit, 'Ego sum veritas.'" Fitz Stephen, Vita (Robertson, Materials, III, 47).



and then because of "a sudden conceit." The later chroniclers take as indefinite a position as possible. Newburgh says that "a new statute by which it is said the custom is not observed is made to reach out and punish criminous clerks,"28 thus admitting that the statute was new and remaining noncommital concerning the custom. The Meaux annalist speaks of a "new evil law" which is meditated by the king and later says that Henry Wished that "the customs which his predecessors had held against the liberties of the church should be made firm" by the bishops. 29 It must be agreed that the position of the contemporary writers was not far from correct. The customs had not been set down in writing. Many of them were old: bishops had asked permission to leave the kingdom and to make appeals to Rome at various times. 30 and many of the checks that Henry had proposed to put upon the ecclesiastical courts had existed before the time of Stephen. On the other hand the grandfather whom Henry II credited with the customs had expressly sworn away the right of holding church lands. 31 and such things as juries to investigate darrein presentment and advowsons were clearly innovations.

^{27 &}quot;Quod asseriter avum vestrum vel alium quemlibet in clericorum necem saevisse, subita quadam praesumptione et semel id factum fuisse cognovimus; sed incongruum valde est ab his sumi exempla justitiae qui quicquid propria elegerant libertate pro legibus affirmabant." Edw. Grim , Vita (Robertson, Materials, II, 387).

²⁸ Wm. New., <u>Hist. Rer. Ang.</u>, 1163 (Howlett, <u>Chronicles</u>, I, 141).

²⁹ Chron. Melsa, I, 186.

³⁰ Note the case of William St. Karileph.

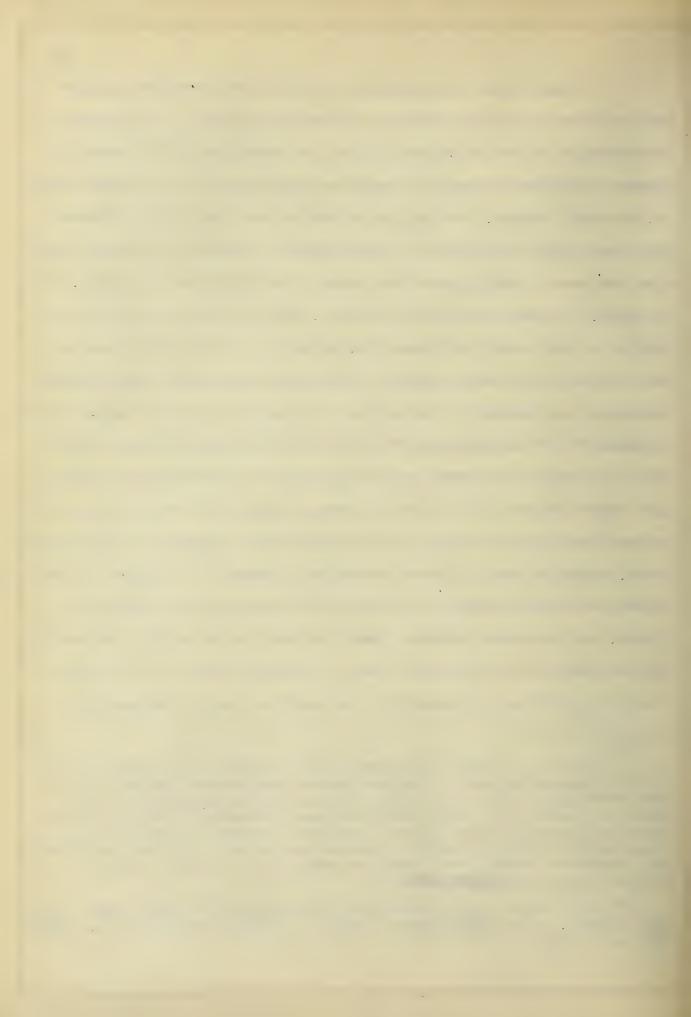
Charter of Henry I,1 (Stubbs, Select Charters, 100).



Respecting the immunity of clerks from secular justice the position of the king does not seem unreasonable. The old interpretation of the third article of the constitutions 32 made it appear that Henry wished to place the congnizance of clerical crime in the royal courts, leaving jurisdiction over spiritual offenses with the church but under the supervision of secular officers. This view has been clearly proved an error. Henry wished to punish, not to judge, the ecclesiastical criminal, and he had no intention to meddle in the purely spiritual jurisdiction of the church courts. The process which Henry wished to establish was simple and possibly canonical: an accused clerk was to be brought before the royal court to plead to the charge against him; after his plea had been made he was to be conducted before his ordinary by the officers of the secular court and was to be given a regular canonical trial: then, if he was found guilty he was to be degraded and returned to the king's court, where he was to be sentenced as a layman. 33 If this is accepted as the true aim of the king with regard to the criminous clerks, the question remains: was the particular chapter regarding them in reality the revival of an old custom or was it an innovation? No evidence in answer to the question can be deduced from

[&]quot;Clerici rectati et accusati de quacunque re, summoniti a Justitia regis venient in curiam ipsius, responsuri ibidem de hoc unde videbitur curiae regis quod ibidem sit respondendum; et in curia ecclesiastica, unde videbitur quod ibidem sit respondendum; ita quod Justitia regis mittet in curiam sanctae ecclesiae ad videndum qua ratione res ibi tractabitur. Et si clericus convictus vel confessus fuerit, non debet de cetero eum ecclesia tueri." Stubbs, Select Charters. 138.

Vita (ibid., 96); Sumna Causae (ibid., V, 202); Rad. Diceto., Opera Hist., I, 313.

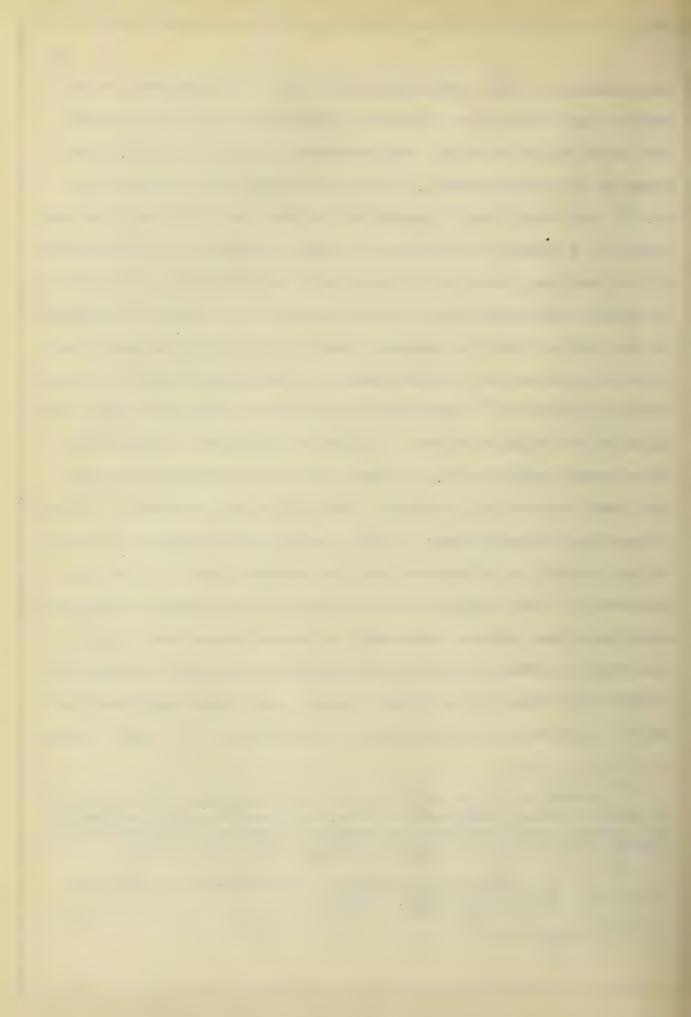


the documents of the Norman period: 34 and it is necessary to go back to Anglo-Saxon law. Alfred's legislation in regard to murders seems to be in point: the murderer is to be degraded, then given up from the minister, unless his bishop will compound his wer. But a difficulty arises in the fact that wer might be paid either as a penalty to the state or as a bloodfine to the relatives of the dead man: moreover it rests with the discretion of the bishop whether the guilty man is to be subjected to secular punishment. In the laws of Cnut the temporal penalty of outlawry appears, but it is only to assure the obedience of a convicted clerk to the penitential statutes. 36 Moreover in each of the cases the trial takes place in the popular courts. It must be concluded that none of these cases really apply, and that there is no positive evidence that Henry was not an innovator. But it is not necessary to depend on positive evidence alone. It is certain that benefit of clergy did not spring up full-grown with the conquest and it is not unreasonable to say that one of the stages of its gradual development might have been secular punishment after ecclesiastical trial. Fitz Stephen hints at this when he advises a king not to depend on custom even though it is known to exist; and Becket admitted that Henry I used the proposed system on one occasion. If these things

The value of the following is questionable: "De illis, qui ad sacros ordines pertinent, et eis, qui sacris ordinibus promoti sunt, coram praelatis suis est agendum de omnibus inculpationibus, maximis et minoribus. "Leg. Hen. Prim., chap. 57, sec. 9.

Alf. 21. Wergild was sometimes paid the king by offenders. Phillpotts, Kindred and Clan. 207 ff.

³⁶ II Cnut, 41.

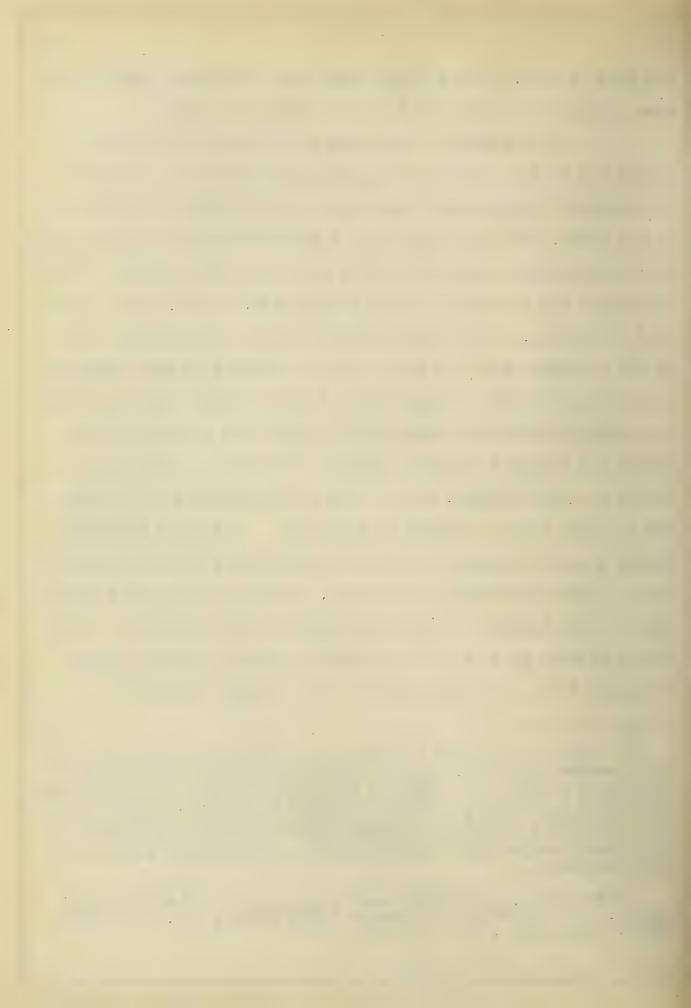


are kept in mind, it is no more than fair to say that Henry II had some precedent for the step that he intended to take. 37

In the arguments that grew out of the Constitutions Becket had much to say concerning the position of the church and the clergy. His principal theme was that the church was superior to the state, that the clergy held a higher position than the laity, and that temporal rulers owed their position to the church. It was impossible for the less to judge the greater, for the son to command the father, or for the pupil to instruct the teacher. Even in Old Testament days the kings had not presumed to pass judgment on priests and since the beginning of the Christian era the greatest secular rulers had recognized the fact that churchmen stood beyond the reach of temporal judgment. The clergy were to be judged by their bishops, who in turn were answerable to the pope and the pope could be judged by God alone. To bring a churchman before a secular judge was to drag Christ before Pilate a second time. These and similar contentions, together with liberal references to the decrees of the church councils and the dicta of the church fathers made up the archbishop's argument against the appearance of the criminous clerks in the secular courts. 38

Tatos curiae tradendos, et post poenam spiritualem corporaliter puniendos; quoniam quo digniores sunt ex privilegio, eo deteriores judicantur in delicto, et quo deteriores in delicto, eo graviori sunt afficiendi supplicio. "Sumna Causae (Robertson, Materials, IV, 202). This is not the best evidence for the author apparently has the bishops assume this position in order that Becket may refute their arguments.

³⁸ Wm. Cant., Vita (Robertson, Materials, I, 26-27); Exerpta (ibid., IV, 147-149); Fitz Stephen, Vita (ibid., III, 59); Herb. Bose., Vita (ibid., III, 267-273).



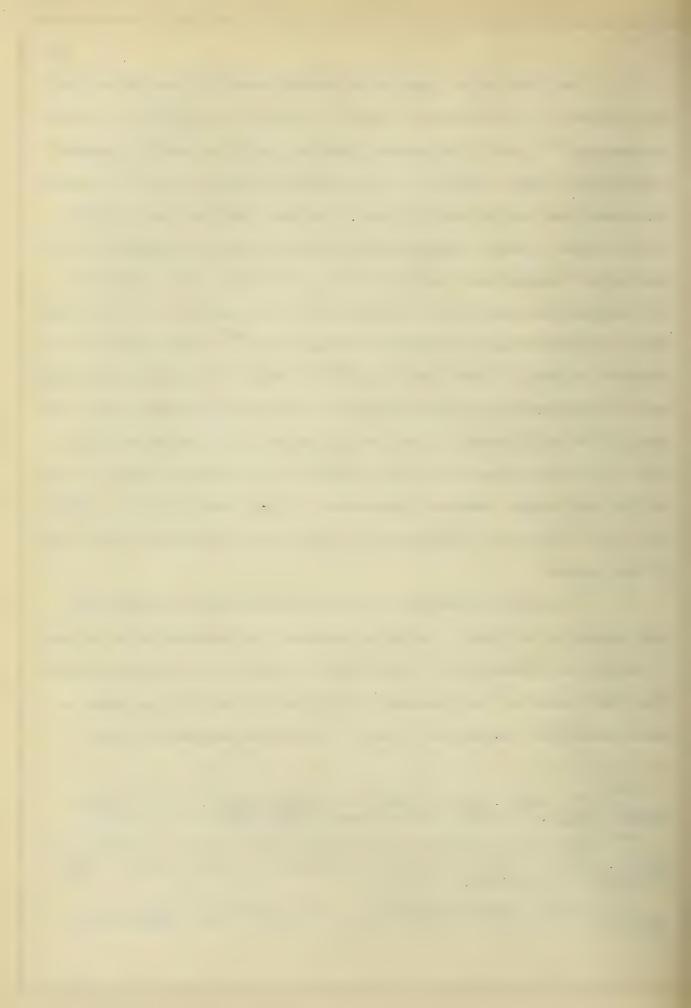
But the point upon which Becket made his real stand was the delivery of the degraded clerk to the lay tribunal for further punishment. 39 Surely no heavier penalty could be awarded against a guilty man than the loss of his orders: to add to this a secular punishment was unjust and illegal, for God does not judge twice for the same offense: nec enim Deus iudicat bis in idipsum. One of the Becket biographers says that the archbishop "often seemed to pass beyond the goals of his predecessors in guarding the law" and this is undoubtedly an instance of that sort. 40 There seems to be abundant authority from the canons 41 to show that double punishment was not condemned and the practice in the case of heresy and apostacy is too well-known to require illustration. The best conclusion to be drawn from the whole affair is that Henry sought to establish and expand certain precedents to the benefit of the state while the archbishop attempted to secure and enlarge the privileges of the church.

In 1165 the struggle which had smouldered through the year broke out afresh. The king summoned the archbishop to attend a council at Northampton. Here the attitude of the king differed from that which he had assumed at Clarendon: he did not press a great cause but persecuted a man. Becket was summoned to the

Auct. Anon., Vita (Robertson, Materials, IV, 32); Sumna Causae (ibid., IV, 202); Herb. Bose., Vita (ibid., III, 281).

[&]quot;Quod antecessorum metas in tuendo jure saepe videbatur excedere, temeritatis arbitrabantur indicium." Joan. Saresb., Vita (Robertson, Materials, II. 310).

⁴¹ See the numerous examples given by Maitland. Canon Law, 141-147.



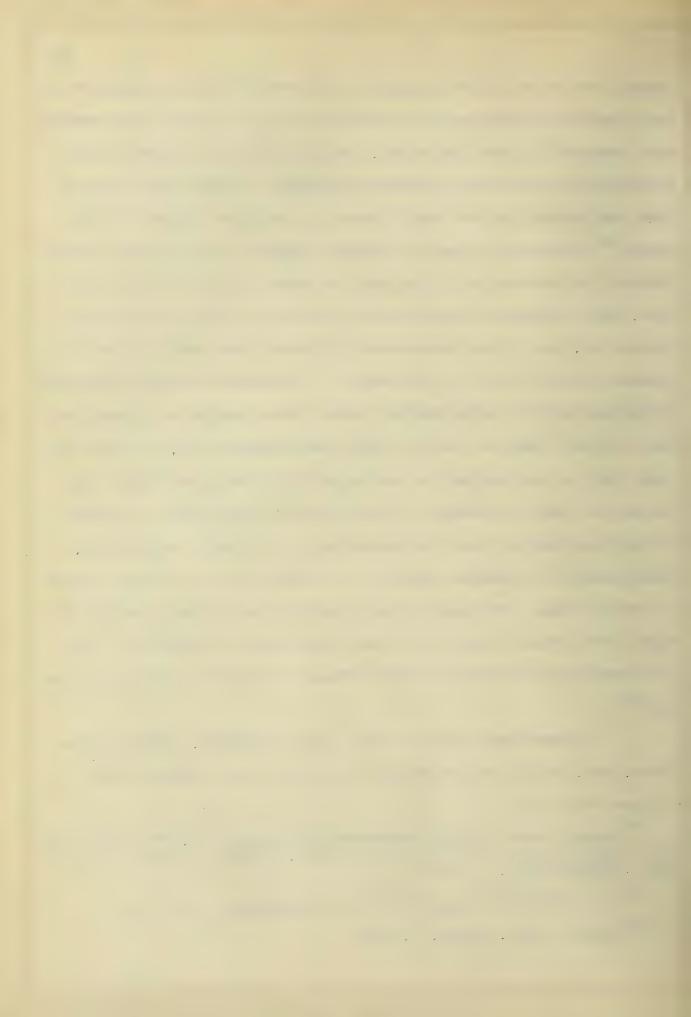
council not as the first magnate of the realm but as a commoner by the sheriff of Kent: he was refused the kiss of peace; his quarters were occupied by the king's men, and finally he was fined an exhorbitant sum for having appeared by proxy to answer the suit of John the Marshal in the king's court, in alleged contempt of the crown. This was a case of personal judgment and led to a debate between the bishops still faithful to Becket and the king's officers, but the word of the king was law and at last the bishop of Winchester, one of the archbishop's friends, was sent to carry the judgment of the court to his master. 43 Moreover the king demanded an accounting for three hundred pounds which Becket as chancellor had received from the manors of Wye and Berkhamstead, and for the sums that he had handled as custodian of churchlands during the vacancy of sees and abbeys. It was clear to all that the object of the king was to force the archbishop to a humble submission. consequently his enemies gained in strength and his friends feared to support him. Overcome by the power against him or possibly by anger, the primate took to his bed from which he refused to stir for three days in spite of orders from the king to appear in counci7.44

Appearing at last in the council chamber, carrying his cross, and, if his followers are to be believed, prepared for

Auct., Anon., Vita (Robertson, Materials, IV, 27); Fitz Stephen, Vita (ibid., III, 51); Gerv. Cant., Opera, I, 183; Rad. Diceto., Opera Hist., I, 313.

⁴³ Fitz Stephen, Vita (Robertson, Materials, III, 52).

⁴⁴ Gerv. Cant., Opera, I, 185.

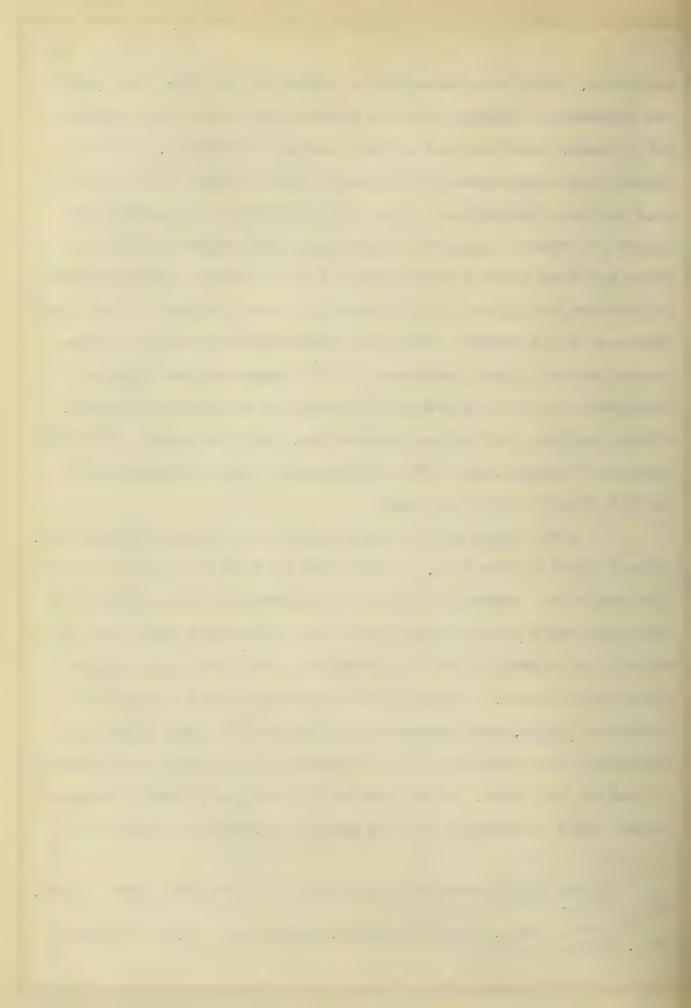


martyrdom, Becket was compelled to remain in the outer hall while the proceedings against him were carried on in the inner chamber. His friends, excepting one or two immediate followers, failed to appear; his enemies among the bishops came to taunt him or to coerce him into submission. After a time Robert of Leicester and Robert of Cornwall appeared to pronounce the judgment upon him which had been found by the laymen of the council: namely that he be arrested and placed in confinement. Becket refused to hear the sentence of his secular judges and threatened the earls with excommunication if they pronounced it. 45 Frightened, the magnates withdrew to bear the archbishop's answer to the king and Becket, without waiting for further proceedings, left the council with his personal followers, and after spending the night in sanctuary began his flight to the continent.

after three weeks Becket was able to cross to France and, after a visit to the king, he proceeded to Sens to lay his case before the pope. Envoys of Henry II had preceded him and had won a following among the cardinals; but the archbishop needed only to exhibit the Constitutions to Alexander to win the papal support. Ten of the customs, including that concerning the punishment of criminous clerks, were condemned by the pope. Then, after surrendering the archbishopric of Canterbury to the pope and receiving it back at his hands, Becket settled at Pontigny to await developments. Here he remained for two years in comparative quiet; for,

⁴⁵ Alan, Vita (Robertson, Materials, II, 332-334); Auct. Anon., Vita (ibid., IV, 51).

⁴⁶ Herb. Bose., Vita (Robertson, Materials, III, 342); Rog. Hov., Chron., I, 231.



after having banished all of the archbishop's relatives, seized the temporalities of Canterbury, and made sure that no papal censures should find their way into England. Henry occupied himself with a war against the Welsh. 47 In the meanwhile the king did not cease his persecution of the clergy, nor did Becket refrain from sending frequent messages into England encouraging his supporters and remonstrating with his opponents. 48 By the imprisonment of his chaplain William. Henry gave the archbishop an opportunity to point out to the pope that the king was still continuing his evil course, and to threaten Jocelyn, bishop of Salisbury, in whose diocese William was imprisoned, that unless he took steps to secure the liberation of the unfortunate chaplain he would be excommunicated. 49 In this case Becket received support from an unexpected source; for his greatest ecclesiastical opponent. Bishop Gilbert of London, wrote the king in behalf of the oppressed churchman. He pointed out to the king that he was endangering his soul by the imprisonment of "William, formerly chaplain of the archbishop and many clerks whom. neither convicted nor confessed, his ministers presume to punish before they are judged by the church of God to which they bear allegiance."50

In 1166 Henry, by threatening to drive the Cistercians

⁴⁷ Gerv. Cant., Opera, I, 196-197; Rog. Hov., Chron., I, 232.

⁴⁸ Rad. Diceto, Opera Hist., I, 323-327.

Epistolae (Robertson, Materials, VI, 31). See also Becket's letters to Henry. Epistolae (ibid., V, 169) and to the pope, (ibid., VI, 48).

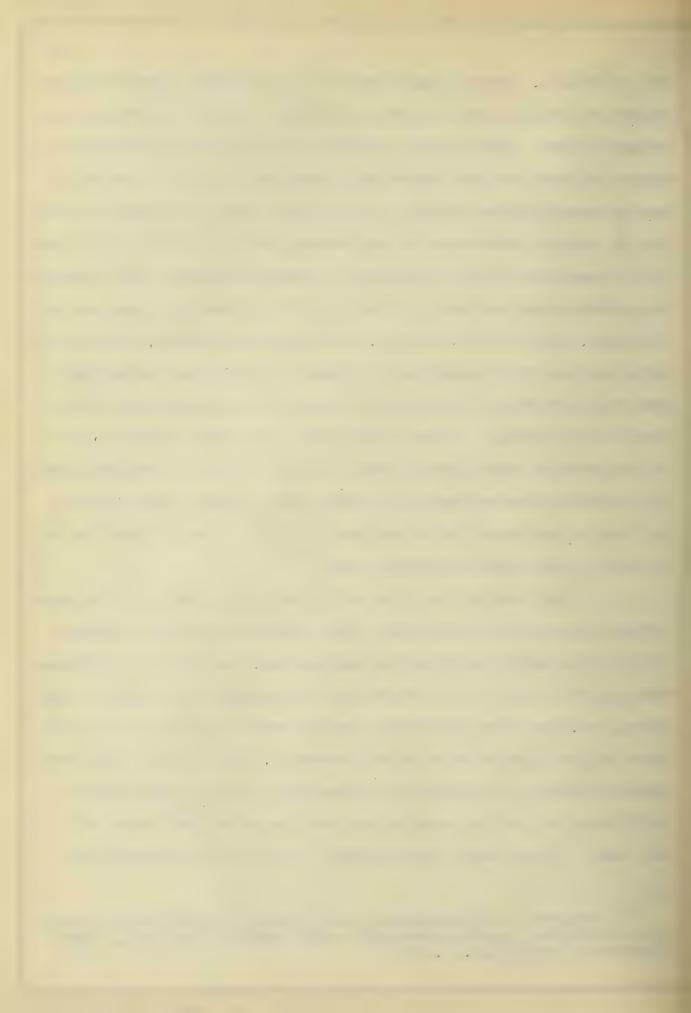
⁵⁰ Epistolae (Robertson, Materials, V, 320). But note that Bishop Gilbert's demands were in keeping with the Constitutions of Clarendon.



out of England, forced them to expel the archbishop from their monastery at Pontigny; but the king of France provided him with a new refuge at Sens. Here he was visited by two legates who brought a series of questions and requested answers which might serve as a base of negotiations with the king. They asked if he would be content to promise obedience to the customs and to return to his place in the peace and favor of the king. Becket responded that "none of his predecessors had been limited to this profession by any one of the kings, nor would he promise, God being his witness, ever to observe customs which were openly opposed to God's law, which take away the privilege of the Apostolic See and annihilate the liberties of the Church." He was then asked if he would return "without any mention being made of the customs." Again he refused, saying that there was an English proverb that silence gives consent and that he preferred exile and death itself to even a tacit submission to the king's obnoxious laws. bl

Political matters did not go well with Henry in the years between the exile of Becket and 1169. There was constant danger of rebellion in his continental possessions, and the king of France when not actually hostile maintained a threatening attitude. Alexander, too, had grown stronger; the anti-pope had died and the efforts of the opposition to find a substitute had not met with great success; Henry was therefore in danger of a papal attack which would bring all of his enemies against him under the banner of a holy war. It was best to make peace. In 1169 the king and the

^{71 &}quot;Respondit archiepiscopus quod nostrae gentis proverbium est quod taciturnus speciem praetendit confitentis." Wm. Cant., Vita (Robertson, Materials, I, 68).

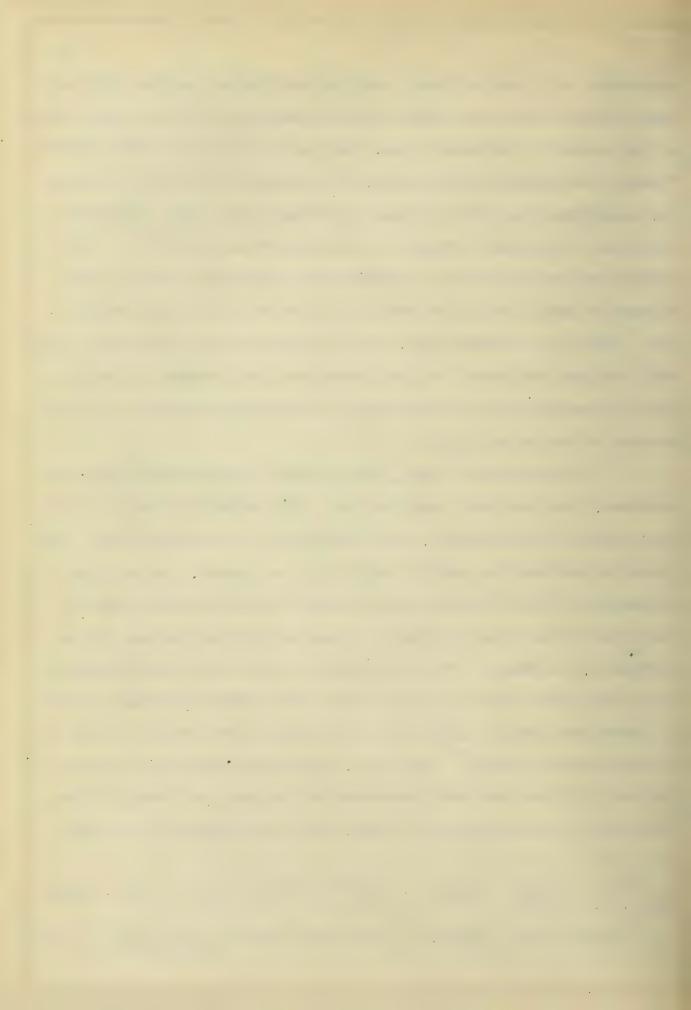


cause Becket would only submit to royal authority "saving the rights of the church;" the second time, this and the king's counter phrase, "saving the dignity of the crown," were omitted, but Henry refused the archbishop the kiss of peace and Becket held that a reconciliation not in proper form was no reconciliation at all. This refusal on the part of the churchman was looked upon as a wilful attempt to humiliate his sovereign and Becket for a time lost favor. The king of France felt that he was proud and ungrateful, and even the pope believed that the archbishop had refused an opportunity for bringing the difficulties of the English church to an end because of his sinful pride.

It was at this time, when Becket's cause seemed the most hopeless, that the king took the step which rehabilitated the failing fortune of the primate, the coronation of his eldest son. Nine years before when the see of Canterbury was vacant, the king had contemplated this step and had procured a grant from the pope by the terms of which he was free to chose any prelate he saw fit to perform the ceremony. This dispensation had never been withdrawn, and it was under color of it that the young Henry had been crowned by Archbishop Roger, Gilbert of London, and three other bishops of the anti-Becket party. The pope, believing that such a proceeding would injure the papal interests in England, had issued a prohibition to the archbishop of York, but it is doubtful if he had

⁵² Gerv. Cant., Opera, I, 208-209, 213-214; Rad. Diceto, Opera Hist., I, 335-336.

⁵³ Gerv. Cant., Opera, I, 219; Rad. Diceto, Opera Hist., I, 338.

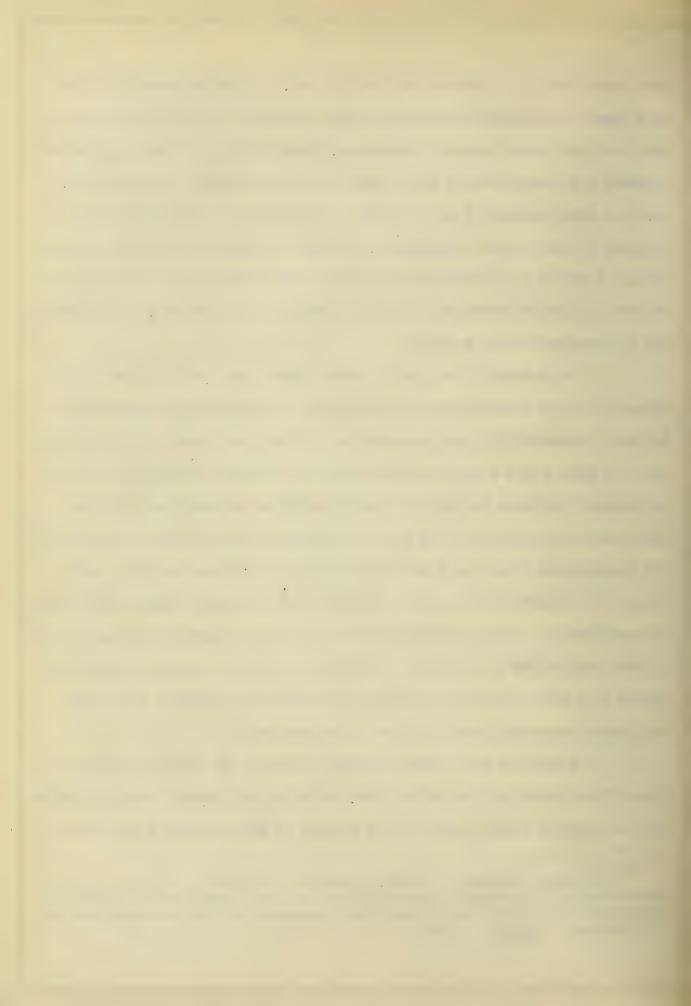


ever received it. Whether he had or not, it now appeared to the pope that the English churchmen were opposing not only their primate but the pope himself; moreover, King Louis of France, angered because his daughter had not shared in her husband's coronation, took up arms against the old king. With war in progress and the censure of the church impending, Henry II hurried to France, where within a month he reëstablished peace with Louis and in the terms of that peace he promised a reconciliation with Becket, thus assuring a truce with the papacy.

As a result of this promise Henry met the archbishop at Frêteval and a compromise was affected: Becket was to return to England in security; the possessions of his see were to be restored and the king was to make amends for the injuries done the church; in return for this he was to render Henry every service that an archbishop could give a king. It promised badly for the success of the compromise that the Constitutions of Clarendon were not mentioned. Likewise there is dispute as to whether Henry gave Becket permission to lay excommunication upon the bishops who had aided in the coronation of his son. Whatever the fact may be, the archbishop did not wait till he himself arrived in England but sent the papal censures ahead of him by messengers.

When the archbishop himself arrived in England his progress from Dover to Canterbury was a triumphal march; but no matter how the people might feel or his clergy rejoice there was an open

Neither Hoveden, Diceto, Wendover, Gervais, nor any of the other Becket biographers make mention of the Constitutions at this conference. Gervais says that Henry agreed to the excommunication of bishops. Opera, I, 220.



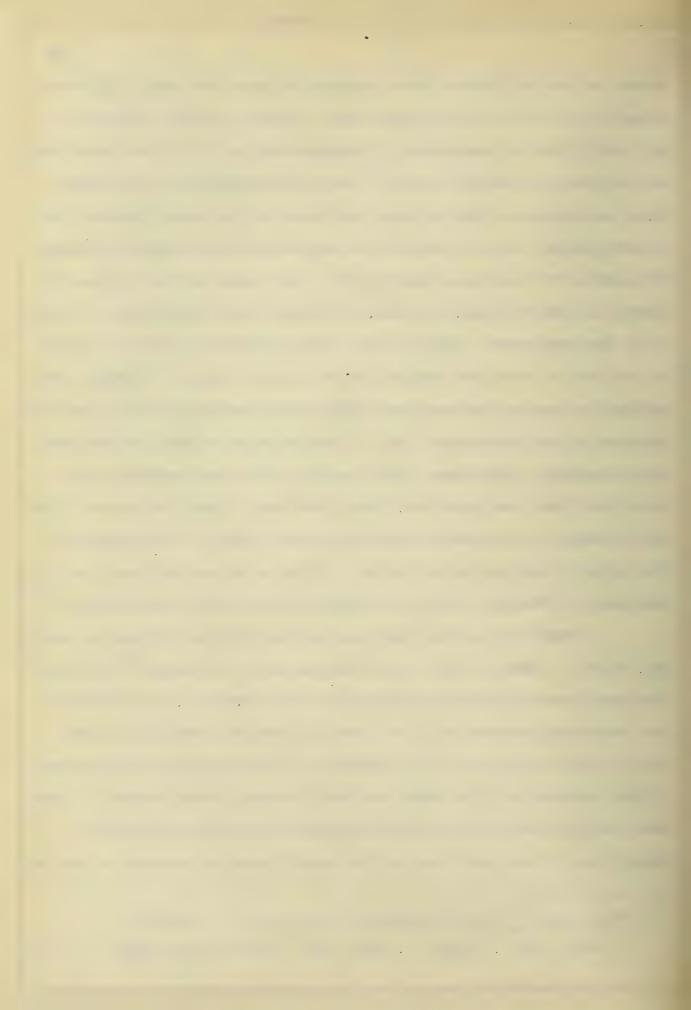
threat in the attitude of the opposing bishops and their followers as well as in that of the young king. Becket did not hesitate to act boldly and his sentences of excommunication fell upon those who had injured him and his church. He sent messengers to the young Henry assuring him that no harm was meant to the royal person; but he also raised the old question of ecclesiastical immunity through the mouths of those same messengers. The clamor of the oppressed clergy had reached him, he said, churchmen were being held in prison by the lay power; they had been "dragged from the law of heaven to the law of earth and punished with various kinds of torment according to secular judgment as though their crimes were not severely punished by ecclesiastical law." Secular affairs are divided from ecclesiastical: therefore, "let the doer of a deed answer in the court that has been provided." and, whether a clerk or layman, "let him be heard not otherwise than in his own court....let those of the Master's own people be led out of the mire and mud lest in the obstinacy of Pharach, the Egyptians be struck with a new plague." 55

Despite the fact that his envoys returned without a hearing, that he himself was refused admission to the court, ⁵⁶ and that wise and powerful friends advised him to be prudent, he continued his headstrong course until at last his enemies carried the news of his action to Henry II in Normandy. In his anger at the conduct of the primate the king made the fatal remark, "What cowards I have about me that no one will free me from this turbulent priest?"

Taking him at his word four of the king's knights crossed to England

⁵⁵ wm. Cant., Vita (Robertson, Materials, I, 115-116).

⁵⁶ Gerv. Cant., Opera, I, 223; Rad. Diceto, Opera Hist., I, 342.



municated bishops. Becket replied that he was unable to do so since the excommunications had been the act of the pope. The knights then retired, armed themselves, and returned. The primate swept along by frightened followers, was at this time in the church; but the knights, not to be thwarted by the sacredness of the place, entered the sanctuary and, unable to drag the archbishop from the building, murdered him before the altar. 57

No matter what may have been the part of Henry II in the death of the archbishop, that death settled the fate of the Constitutions of Clarendon once for all. On the very night of the murder the dead man appeared to one of his monks; ⁵⁸ the next day the rumor of miracles began to circulate; and within a month, though Becket had not been canonized, the church at Canterbury had become a shrine. The people of England favorable to Thomas before his death became ardent worshippers; the pope prepared the censures of the church, foreign prelates urged the Holy See to hasten punishment; Normandy under the interdict of the archbishop of Sens threatened to revolt; Louis of France prepared for war. ⁵⁹ There was nothing left for Henry II but to make his peace on the best

⁵⁷ Gerv. Cant., Opera, I, 225-227; Rad. Diceto, Opera Hist., I. 343.

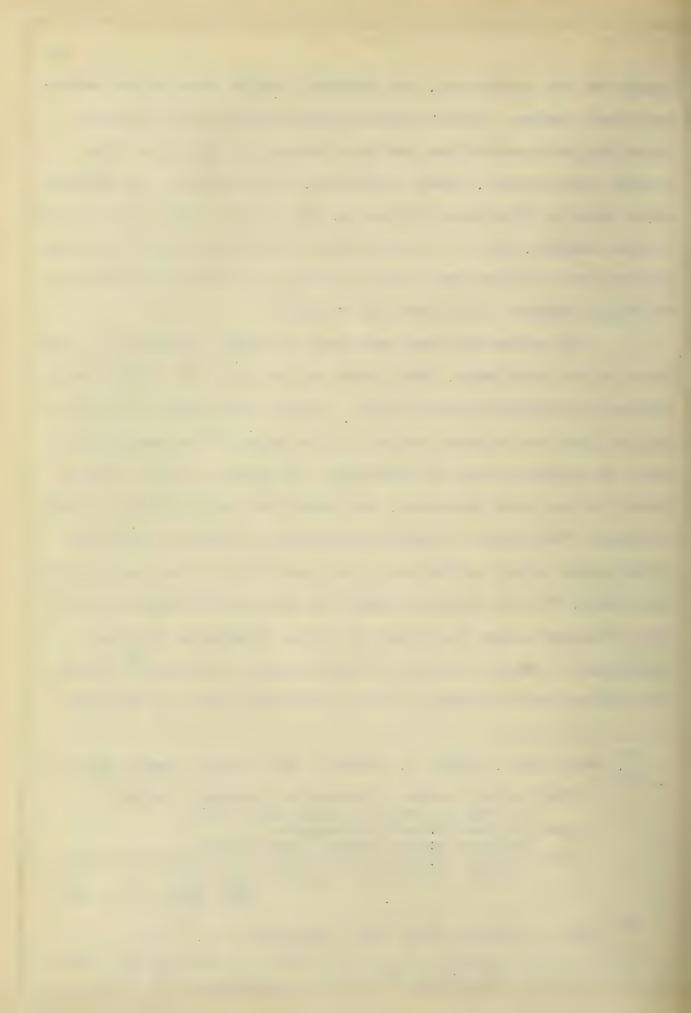
[&]quot;Pro Christi sponsa, Christa sub tempore, Christi In templo, Christi verus amator abit:

Anno milleno centeno septuageno Anglorum primas corruit ense Thomas.

Quis moritur? Praesul: Cur? Pro grege: Qualiter? Ense: Quando? Natali: Quis locus? Ara Dei."
Eul. Hist., III. 87.

Bened., Miracula (Robertson, Materials, II, 27).

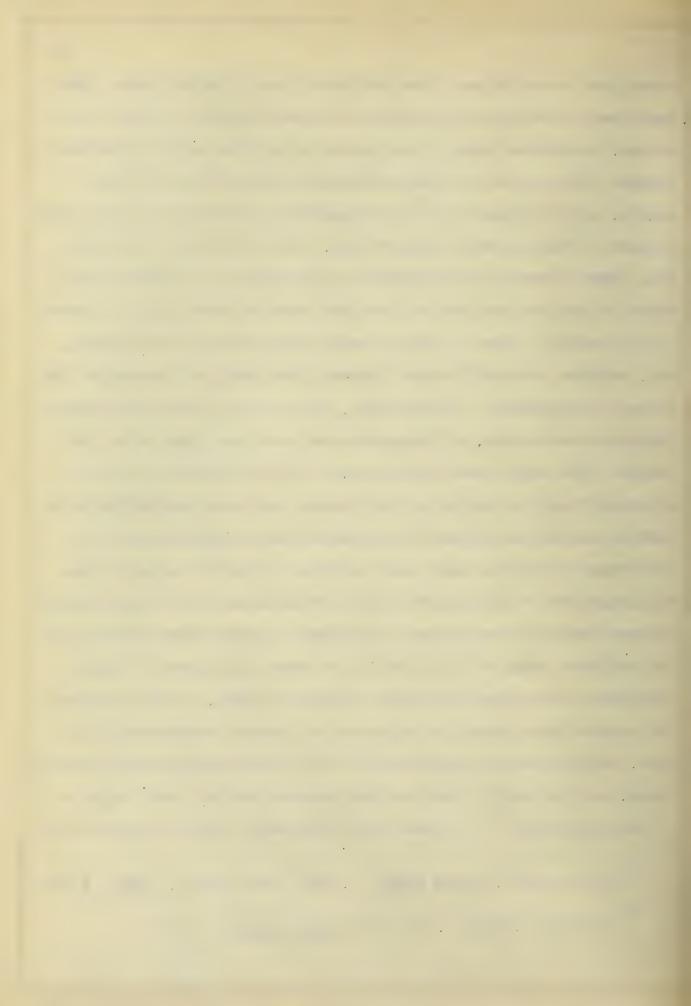
⁵⁹ Rog. Hov., Chron., II, 18-25. Letter of archbishop of Sens to Alexander III, Epistolae (Robertson, Materials, VII, 442).



terms that he could get. Nor was Henry in a fighting mood. When the news of the murder reached him, either because of guilt or of sorrow, he entered upon a long period of silence and self-imposed penance, from which he aroused himself at last to placate the church, not to oppose it. 60 His legates to the Holy See won a suspension of the sentences against him, and in the time thus given him. Henry turned to the conquest of Ireland as an offering that might be laid at the feet of the pope when he asked for the pardon of the church. After a stay of seven months Henry left Ireland, and, marching directly across England, took ship at Portsmouth and sailed for Normandy. In September, 1172, he met the papal legates. Theodinus and Albert, at Avaranches and made his peace with the church. The king first purged himself of the murder of Becket. swearing "upon the relics of the saints, and upon the Holy Gospels that he had neither ordered or desired that the archbishop of Canterbury be put to death and that when he heard thereof he was deeply grieved." He admitted that the murderers had acted because of words which he had spoken and offered to make amends for being the indirect cause of their crime; he swore allegiance to Pope Alexander; he promised to permit appeals to Rome, to go to Jerusalem within three years, to maintain two hundred crusaders for a year, to restore the possessions of the church which he had confiscated, and to recall those who had been exiled for their support of the archbishop. 61 He added that "he would utterly abolish the

⁶⁰ Rad. Diceto, Opera Hist., I, 345; Gerv. Cant., Opera, I,233.

Rog. Hov., Chron., II, 35; Chron. Melsa, I, 200.

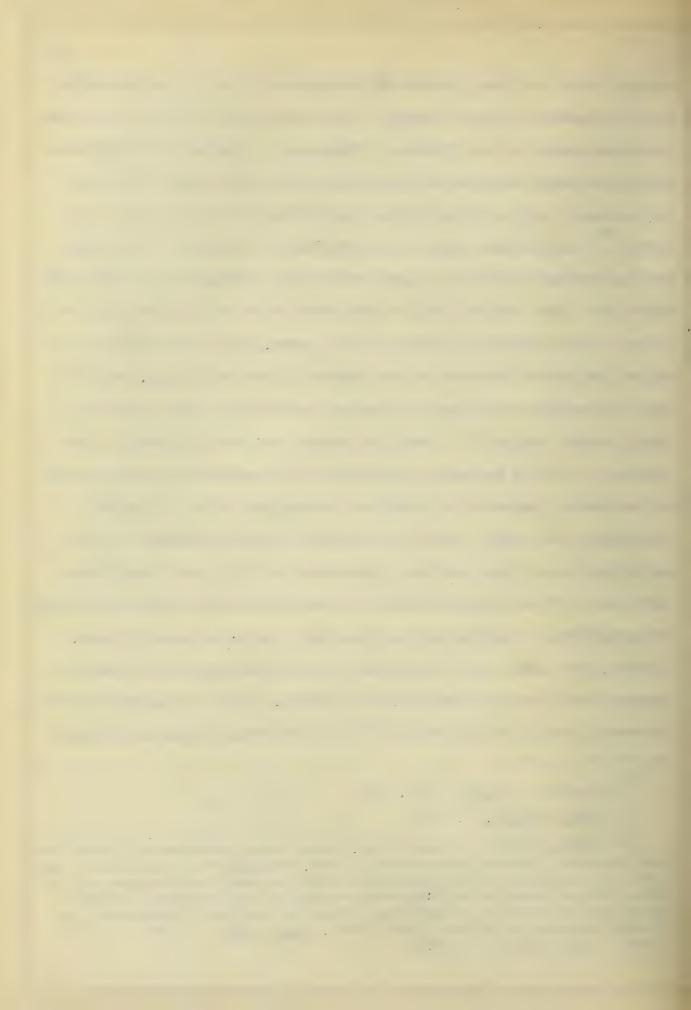


customs that had been introduced during his time to the prejudice of the churches of his kingdom." The young king joined in the complete surrender of his father. Thereupon a charter of absolution was given Henry containing the provisions of the oath above and the command that he observe them all "without fraud or evil intent." In the same year the archbishop of York and the others who had opposed Becket appeared before the archbishop of Rouen and swore that they had not before the coronation of the new king received the prohibitory letters of the pope, that they had not accepted the Constitutions of the father of the said king, and that they had neither procured nor had any knowledge of the death of the Glorious Martyr."63 Henry's penance was not finished at Avranches. In 1174 he made a pilgrimage to Canterbury where dressed in penitental garments he remained before the altar in prayer throughout the night. "The king moreover out of devotion to the martyr and as a true penitent renounced the evil and iniquitious [articles] of his constitutions but sanctioned the good observation by posterity." The chronicler does not stop with Henry's oath. however, but adds that, though the customs were several times renounced and often condemned by the church, some of them were "still observed throughout the realm."64 His reference here is probably

⁶² Rog. Hov., Chron., II, 37.

⁶³ Chron. Melsa, I, 202.

^{64 &}quot;Consuetudines etiam illas, quae inter martirem et ipsum totius fuerunt dissensionis materia, rex, tanquam vere poenitens, pro martiris devotione et per martiris virtutem abdicavit malas et iniquas; bonas vero solum observandas sanxit in posterum. Quarum taman abdicatarum sic nonnullae, etiam ab ecclesia dampnatae, per regnum observantur adhuc." Mat. Par., Hist. Ang., I, 386. Rad. Diceto, Opera Hist., I, 383.



to the forest laws, for Hoveden says that in 1175 the king "impleaded all the clergy and laity of his kingdom who...had committed offenses against him in his forest." Later that year Cardinal Hugo came to England as papal legate at the request of the king and to the disgust of the clergy conceded to Henry the right to punish the clerks for offenses in the royal forests. 66

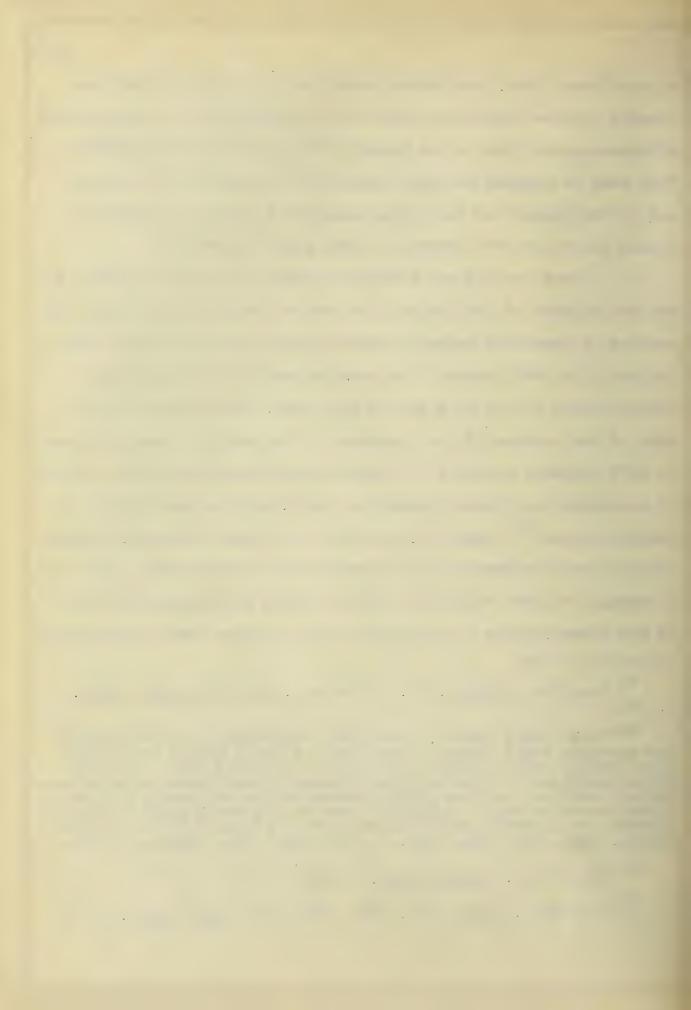
Save for his own efforts to clear his soul or perhaps to win the support of the people, the rest of Henry's reign after the meeting at Avranches passed without further mention of the Constitutions. In 1173 Richard, the archbishop-elect of Canterbury "swore fealty to the king saving his order," and no mention was made of the customs of the kingdom. ⁶⁷ The general council at Rome in 1179 probably moved by the Becket affair declared that no bishop or ecclesiastical person should be compelled to appear before the secular courts. ⁶⁸ Henry II, save for the forest offenses, appears not to have interfered with ecclesiastical jurisdiction. In 1188 a templar, Gilbert of Hoxton, whom the king had appointed as one of his clerks, stole a considerable sum of money from the crusading

Rog. Hov., Chron., II, 79; Bened., Gest. Reg. Hen. Sec.,

[&]quot;His itaque gestis, praedictus cardinalis, qui in Angliam per mandatum regis venerat, concessit et dedit domino regi licentiam implacitandi clericos regni sui de forestis suis et de captione venationum. Ecce membrum Sathanae! ecce ipsius Sathanae conductus satelles! qui tam subito factus de pastore raptor, videns lupum venientem fugit et dimisit oves sibi a summo pontifice commissas, pro quarum tutamine missus erat a Romana sede in Angliam." Bened., Gest. Reg. Hen. Sec., I, 105. Rog. Hov., Chron., II, 86.

⁶⁷ Rog. Wend., Flores Hist., I, 92.

⁶⁸ Rog. Hov., Chron., II, 182; Mat. Par., Hist. Ang., I, 414.

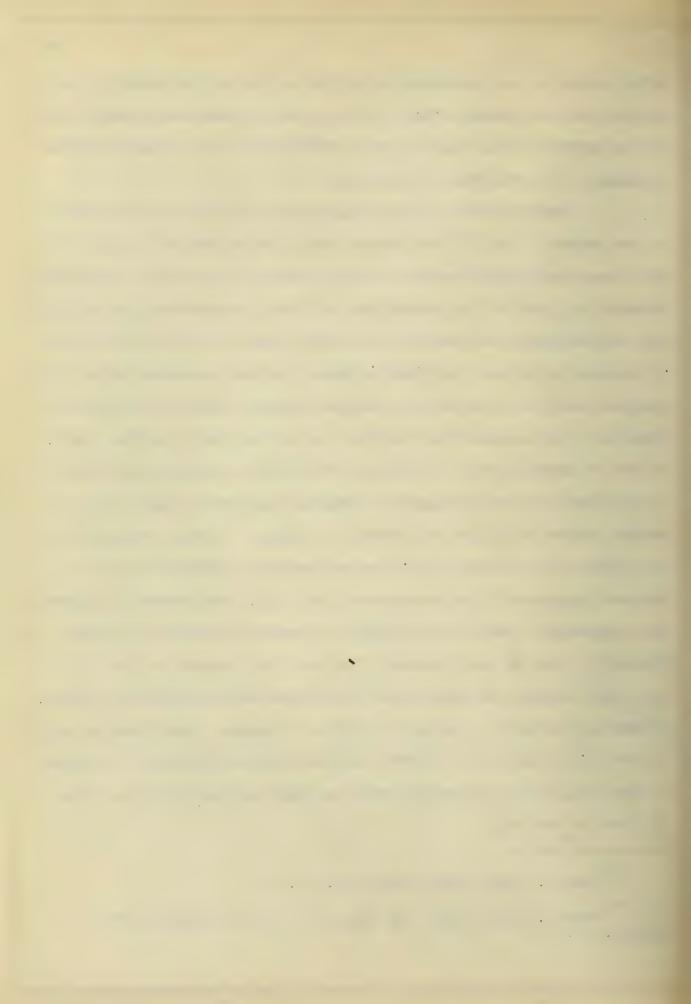


tithe which he was appointed to collect. He was detected by his fellows and was taken before the king who at once surrendered him to the master of the Temple, with orders that he be dealt with according to the statutes of the order. 69

The attitude of the young king was not so satisfactory to the church. In 1176 he entered one of his frequent plots with the French and Norman enemies of his father. His vice chancellor. formerly a clerk of the archbishop of York, discovered the conspiracy and being in the gratitude or more likely in the pay of Henry II decided to reveal the whole affair. He was detected before his purpose could be carried out and was brought before young Henry in council. The council decided that the clerk should suffer death, either by hanging or by flaying; but at this juncture the bishop of Poitiers claimed the man as a deacon "asserting that clergy in sacred orders could not be judged by laymen." Henry, seeing that he could not punish the clerk as he desired, ordered that he be whipped through all the streets of the city, then taken to Argentan and imprisoned, and that he should be beaten whenever he passed through a town on the journey. The old king learned of this and sent four knights to demand the clerk from his son and the latter, though he feared to disobey his father's orders. "disliked so much to see the clerk escape alive" that he ordered him sent in chains to England, where the unfortunate man was delivered to the abbot of Hyde by the king.

⁶⁹ Bened., Gest. Reg. Hen. Sec., II, 47.

⁷⁰ Bened., Gest. Reg. Hen. Sec., II, 122-123; Rog. Hov., Chron., II, 94.



Chapter IV

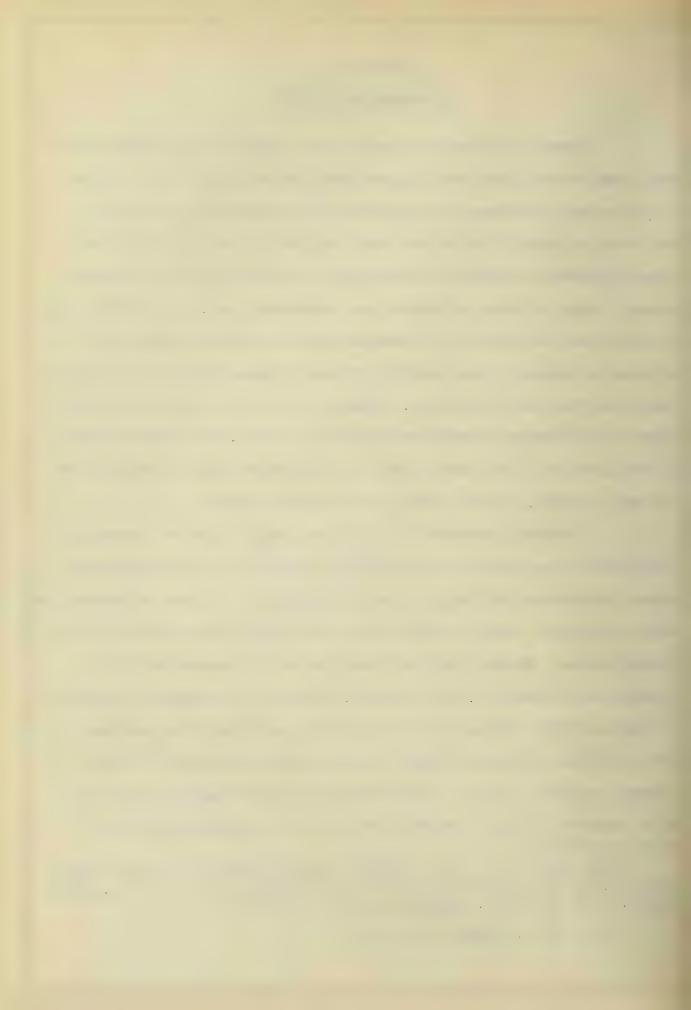
THE PERIOD OF GROWTH

During the greater part of his reign of ten years Richard I was absent from the kingdom and the administration was left to the royal ministers, who guided the governmental machinery built up by Henry II with the dual purpose of meeting with the king's constant demands for money and of adding to their personal power. Many of these officers were churchmen who, interested only in their own advancement, forwarded their private interests at the expense of those of the church. Foremost among the minister bishops stood William Longchamps, bishop of Ely, who held at the same time the offices of chancellor and papal legate, and was regarded in the absence of the archbishop of Canterbury and the vacancy of the see of York, as the head of the English church.

Richard hesitated to allow so great power to remain in the hands of one man and therefore divided the administration between Longchamps and Hugh, bishop of Durham. It was in connection with the latter that the first case involving the position of the elergy arose. Bishop Hugh had been in exile because of his trouble with Henry II, but Richard, who was in Normandy, sent him to England with letters certifying his appointment as justiciar over all lands from the Humber to the Scotch boundary. Long-champs received the new justiciar with apparent good grace but soon arrested him and extorted from him the possession of the

The chancellor paid ±10,000 for his office, and the bishop gave ±3,000 for the earldom of Northumberland. Rich. Deviz., Gest. Rich., 1189 (Howlett, Chronicles, III, 386-387).

² Rog. Hov., Chron., III, 35.



northern castles committed to his care by the king. Hugh at once sent messengers to the king complaining of the injuries he had sustained and Richard sent orders from Marseilles commanding that the earldom of Northumberland be restored to the bishop. The chancellor was either disobedient or had received secret orders of a different tenor, for Hugh was kept in custody as long as Long-champs remained in power. This proceeding, so similar to that which had called down the wrath of the church on the head of King Stepehn, passed without notice for the time at least.

The chancellor soon involved himself in a much more serious affair. In 1190, while in Normandy, the king had exacted oaths from his brother John, and from his natural brother Geoffrey, archbishop-elect of York, that neither of them would return to England for a period of three years without royal permission. He had released John from this oath but in 1191 Geoffrey was still in exile. In this year however, he was consecrated by the archbishop of Tours, and "solicited by his brother and commanded by the pope" he returned to England in contempt of his oath. The prospect of his coming was known to the chancellor who sent letters to the sheriff of Sussex ordering the arrest of the archbishop if he should set foot in England and commanding the seizure of any letters which might be found in his possession from "our lord the

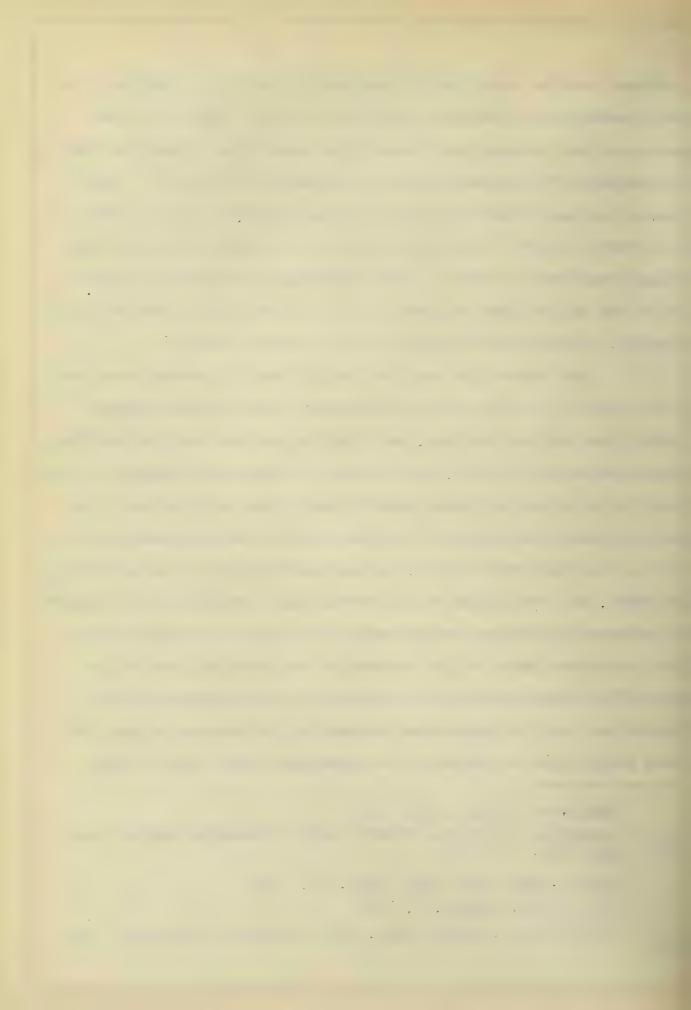
Rog. Hov., Chron., III, 38.

⁴ According to Diceto, Richard gave Longchamps complete control. Opera Hist., II, 83.

Bened., Gest. Reg. Hen. Sec., II, 109.

⁶ Walt. Hem., Chron., I, 176.

Rich. Deviz., Gest. Rich., 1191 (Howlett, Chronicles, III,



pope or any other great man."8 Geoffrey succeeded in landing in safety and at once took refuge in the priory of St. Martin near Dover. Here he was found by the chancellor's agents and after a siege of six days was arrested and imprisoned in Dover castle. which was under the control of Longchamps' sister. The capture of the archbishop was dramatic. When the soldiers entered the priory. Geoffrey pointedly announced that he was the archbishop: but the knight in charge of the party replied that he knew the man he sought only as an oath-breaking brother of the king: 10 then. though the archbishop was standing before the altar in his robes and with his cross in his hands, the soldiers seized him by the feet and, "with his head beating upon the ground," dragged him from the church. 11 He was next tied to a horse and taken to prison to await the pleasure of the chancellor. 12 The imprisonment of an archbishop roused the whole clergy of England, especially since the hated chancellor was the instigator of the outrage. Longchamps "seeing that the whole realm, people as well as clergy, were not a little moved, and receiving letters from Count John as well as other magnates of the realm, barons and bishops, concerning the liberation of the archbishop sent the Count of Warrene. uncle of the archbishop, with an order that the archbishop be

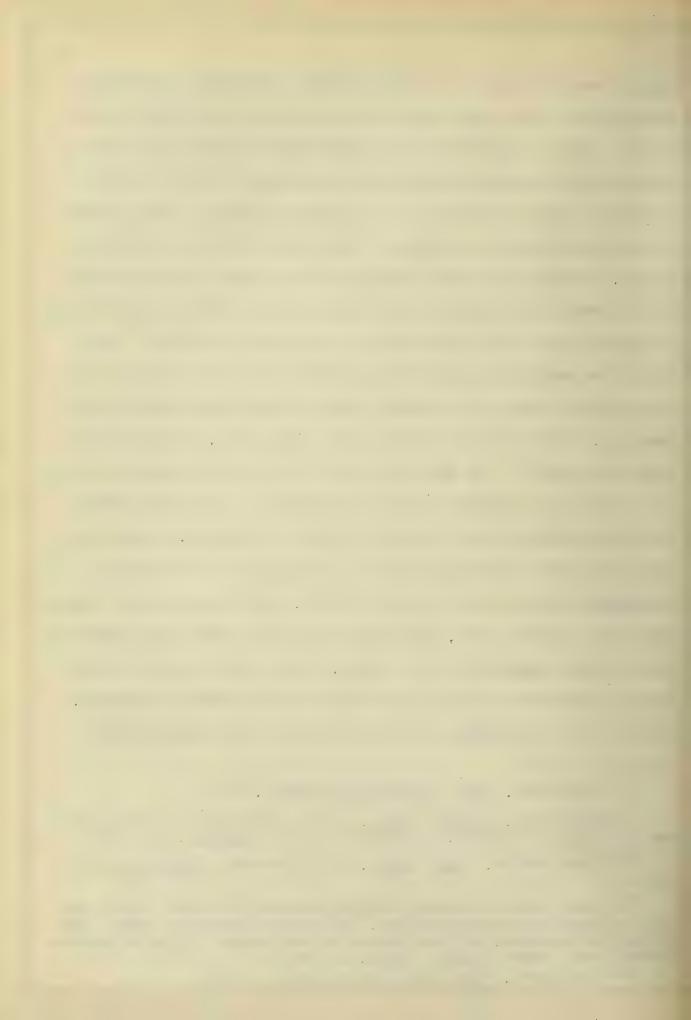
Gir. Camb., Vita Archiepiscopi Ebor., 389.

Rog. Wend., Flores Hist., I, 193. Hoveden says the castle was in charge of Mathew, constable of Dover. Chron., III, 138.

¹⁰ Rich. Deviz., Gest. Rich., 1191 (Howlett, Chronicles, III, 412).

[&]quot;Quod facere recusans archiepiscopus, stolam in collo gerens, in manibus crucem bajulans, ab altaris cornu per pedes, per crura, per brachia, colliso capite in pavientum, violenter extrahitur." Rog. Wend., Flores Hist., I, 194.

¹² Gir. Camb., Vita Archiepiscopi Ebor., 392.

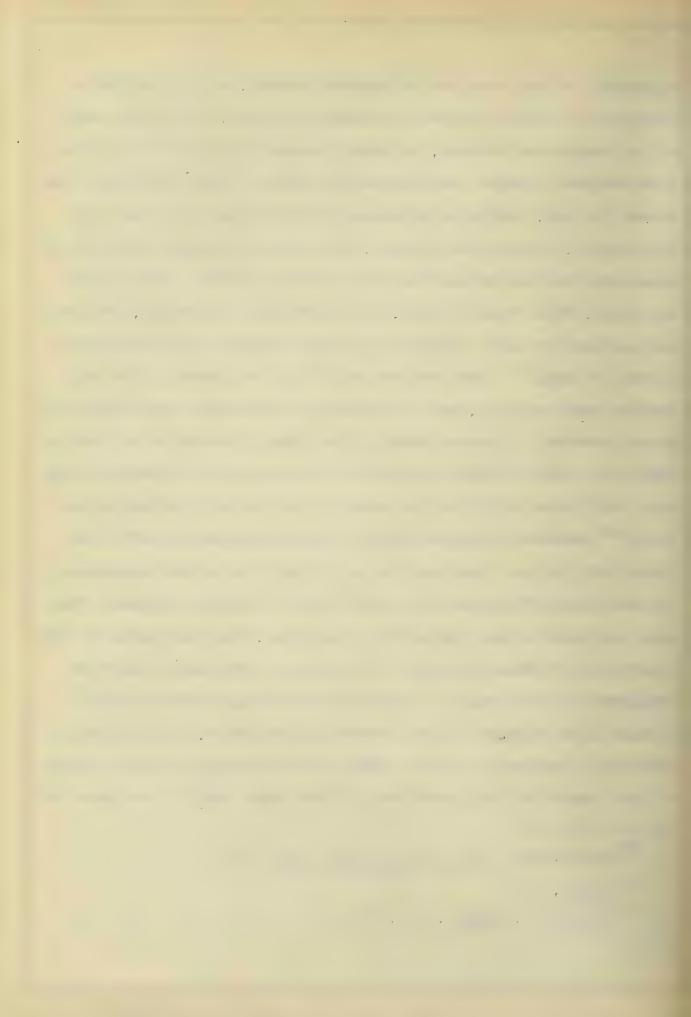


released. He was required to promise however, on his oath as a bishop and a priest to come to London and there, before the court of the barons and bishops, to submit himself to their counsel and give whatever pledges the king should demand. When the bishop had agreed to this, saving nevertheless in all things his order and his dignity, a horse was brought, on which he mounted, his mode of departure thus resembling the way in which he came. And in alb and stole, with cross in hand, he alighted at the priory, the people in tears of joy, applauding, as they had wept for sorrow when he was led away. 13 But the harm was done, the chancellor's reparation came too late, and the hoped for opportunity had been given to his enemies. A large number of the clergy assembled at Reading where the bishop of Bath denounced the sentence of excommunication upon "all those guilty of the above crime, as well patrons as actors;"14 moreover the archbishop of Rouen appeared a short time later with letters from the king as a result of which the chancellor was forced from power and compelled to flee in disgrace. The pope inclined to the side of the chancellor, for the clerks of the archbishop of Rouen reported from Rome that Longchamps had been exonerated of the wrong he had done without any form of trial. 15 Richard also appears to have favored his minister, for in 1194 he effected a compromise by the terms of which Bishop William "should at the summons of the Archbishop of York make oath at the hands of

Gir. Camb., Vita Archiepiscopi Ebor., 395.

¹⁴ Ibid., 401.

¹⁵ Rog. Hov., Chron., III, 191.



one hundred priests that he neither ordered nor desired that the said archbishop should be arrested."16

Archbishop Geoffrey was hardly out of one difficulty before he was involved in another. This time the canons of his church appealed to Hubert Walter, archbishop of Canterbury and justiciar of the realm, to right the wrongs done them by Geoffrey. Six justices were sent to determine the case and as a result, a number of the archbishop's men were imprisoned for robbery. Geoffrey refused to appear before the justices for judgment; he was therefore dispossessed of all his manors save one, and two of the judges were left "to supervise the archbishop and his shrievalty." Later the archbishop was restored to his estates upon the payment of a thousand marks to the king, and his men, "clerks as well as laymen," were released on bail. 19

In 1194 the king demanded the judgment of his great council against his brother John and Hugh de Nuant, bishop of Covertry, for conspiring with the king of France. The council ordered them both to appear before it within forty days and provided that if they did not, John should forfeit all his possessions and the bishop should be judged "by the bishops because he was a bishop, and by the barons because he had been the king's sheriff." 20

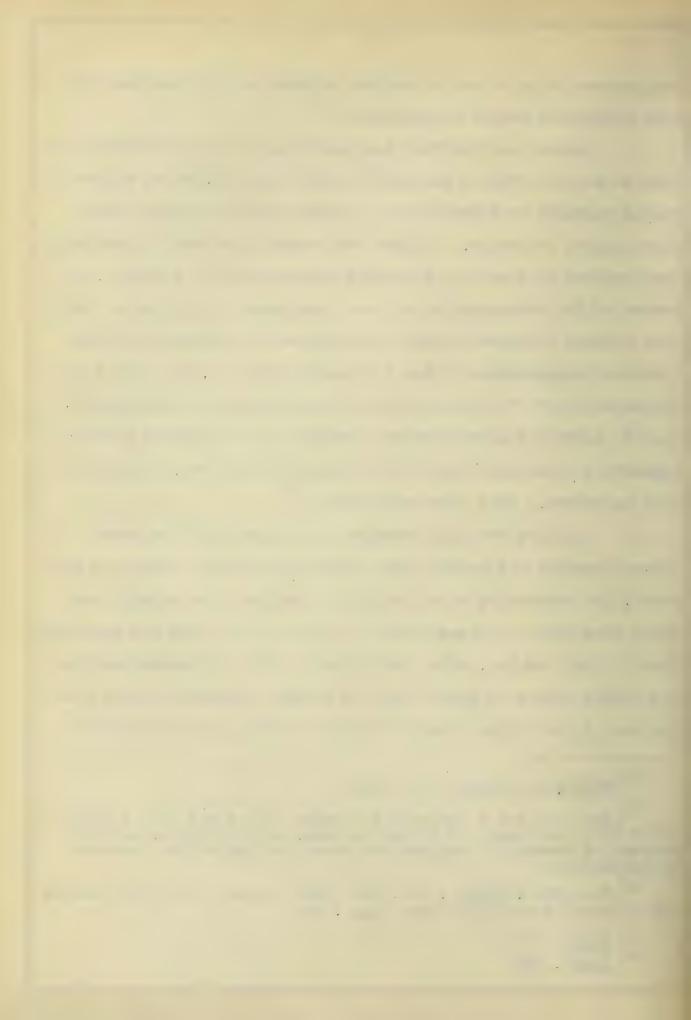
Rog. Hov., Chron., III, 250.

¹⁷ Geoffrey had a genius for trouble; if he was not in difficulty with the king, his fellow bishops, or his clergy, he would reopen old wounds by carrying his cross upright in the province of Canterbury.

¹⁸ Rog. Hov., Chron., III, 261. This was not the first time he had refused to hear sentence. Ibid., 242.

¹⁹ Ibid., 273.

²⁰ Ibid., 241.



Apparently the bishop forfeited his temporalities, for the following year the king "forgave him his wrath and displeasure...and restored his bishopric to him, for which he paid five thousand marks of silver." 21

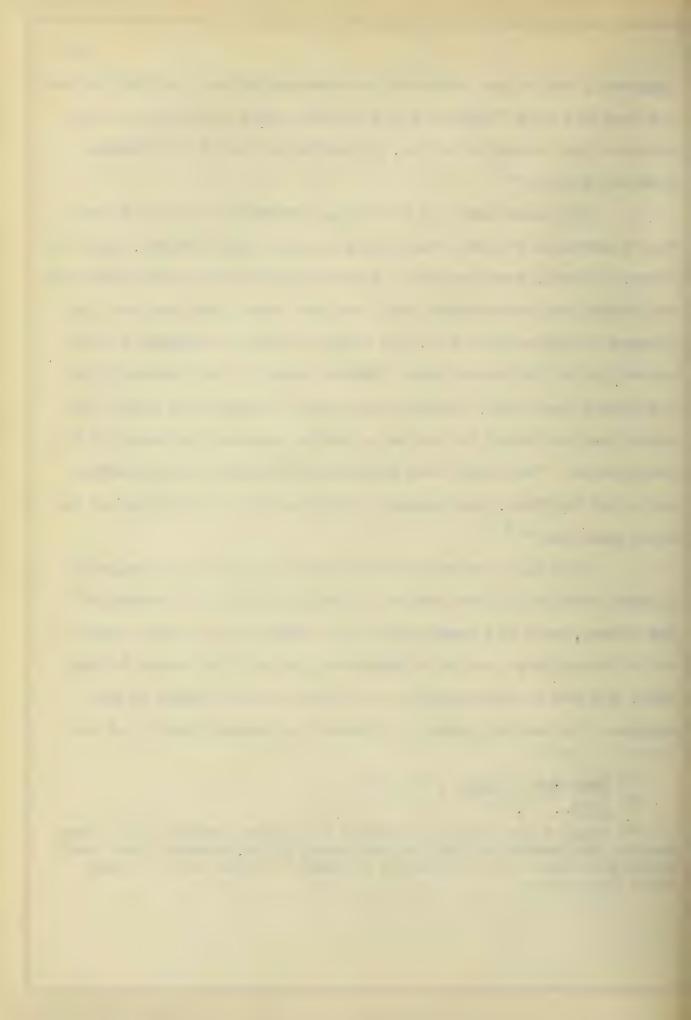
In consequence of the dying confession of one of Geoffrey's servants who admitted having forged papal letters, Roger of Ripon, a clerk, was arrested. A quantity of poison was found upon his person and he admitted that this had been given him for the purpose of making away with the dean of York, the leader of the opposition to the archbishop. Hubert Walter in his capacity as the king's justiciar, summoned the dean to Canterbury where the poison was delivered to him and a public ceremony was made of its destruction. The clerk "was kept in confinement and the adversaries of Geoffrey, archbishop of York, cast all the blame of the crime upon him." 22

The most interesting case arising during the reign of Richard grew out of the capture of Philip, bishop of Beauvais. 23 The bishop, with his archdeacon and a number of knights, sallied out of his city to resist a plundering expedition headed by Earl John, but was so unfortunate as to fall into the hands of his enemies. He was delivered to Richard who ordered him to be im-

²¹ Rog. Hov., Chron., III, 287.

²² Ibid., IV, 15.

²³ This is not strictly benefit of clergy, because the bishop was not the vassal of the English king; it is, however, the best example of one of the technical grounds on which the privilege could be denied.

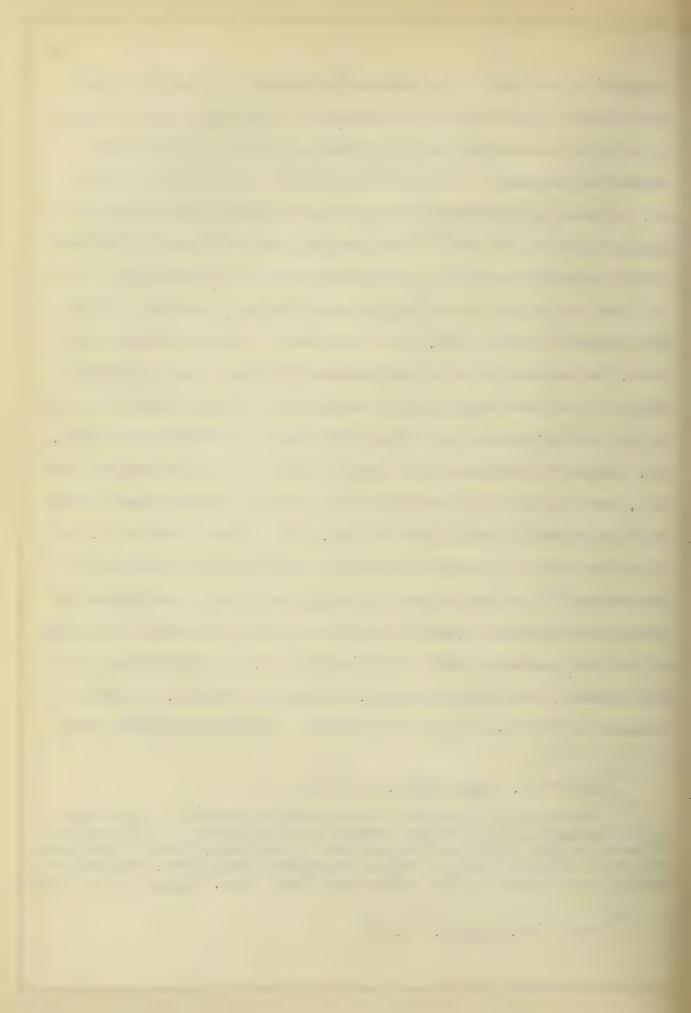


prisoned in chains. 24 The chapter of Beauvais appealed to the pope for aid in securing his release and Celestinus sent a letter to the king requesting that "his dear son and the son of the church" be released. In reply Richard sent the bishop's coat of mail to Rome and requested the pope to declare whether it was the cloak of his son or not. 25 The pope at once withdrew his request for the bishop's release. Two years later the bishop sent a letter from his prison reproving the pope for his inaction: Richard had attacked his city and, as it was lawful to repel force with force, he had mingled with the warriors who went out to check the enemy; he had been captured and thrown into prison despite his order and the reverence due to God: the pope had knowledge of this. yet, though Richard had made himself liable to ecclesiastical censure, nothing had been done; the pope should remember that he who fails to correct a fault when he can, is not free from guilt, nor is he who fails to prevent a manifest wrong above suspicion of connivance. 26 To this attack Celestinus replied: the bishop was being justly punished since he had laid aside his mitre for a helmet and his pastoral staff for a sword, and, by foolish and insolent counsel, had led his master, the king of France, to attack a crusader in spite of the oath of peace. Although the bishop had

Mat. Par., Chron. Maj., II, 421.

^{25 &}quot;Praecepit igitur rex ob reverentiam Papae ut lorica episcopi tunc deponeretur et ipsi Papae praesentaretur, et diceretur,
'Vide si tunica filii tui sit an non?' Cui Papa, 'Non filius meus
est vel ecclesiae; ideo ad regis voluntatem redimatur, quia potius
Martis quam Christi miles judicatur.' "Mat. Par., Chron. Maj., II, 422.

Rog. Hov., Chron., IV, 21.



fallen into a pit of his own digging, the pope would intercede for him at the opportune time, but meanwhile he must "bear resignedly what he endured deservingly." The bishop did not improve his position by an attempt to escape, 28 and he was held in close confinement until after Richard's death, when he "satisfied King John with six thousand marks of silver" and swore that he would never again bear arms against a Christian. 29

The general attitude of Richard toward the clergy must be considered as favorable. One of his earliest acts, a grant of 1190, allowed to the clergy of Normandy a complete immunity from arrest for all lesser crimes. In cases of murder, robbery, and arson, clerks might be arrested by the secular officers but were to be delivered to the court Christian as soon as they should be claimed by the ecclesiastical judges. The Richard, in spite of the fact that he sold offices in the state, did not tolerate simony or permit the holding of church offices by laymen; he bestowed monasteries and bishoprics on canonically elected priests and always gave attentive ear to the complaints of the church. It is said that he once remarked to Geoffrey Fitzpeter that if the churchmen knew how much he respected and feared them they "would trample on him as on an old and worn out shoe." In the enforcement of the forest laws he took a position similar to that of his

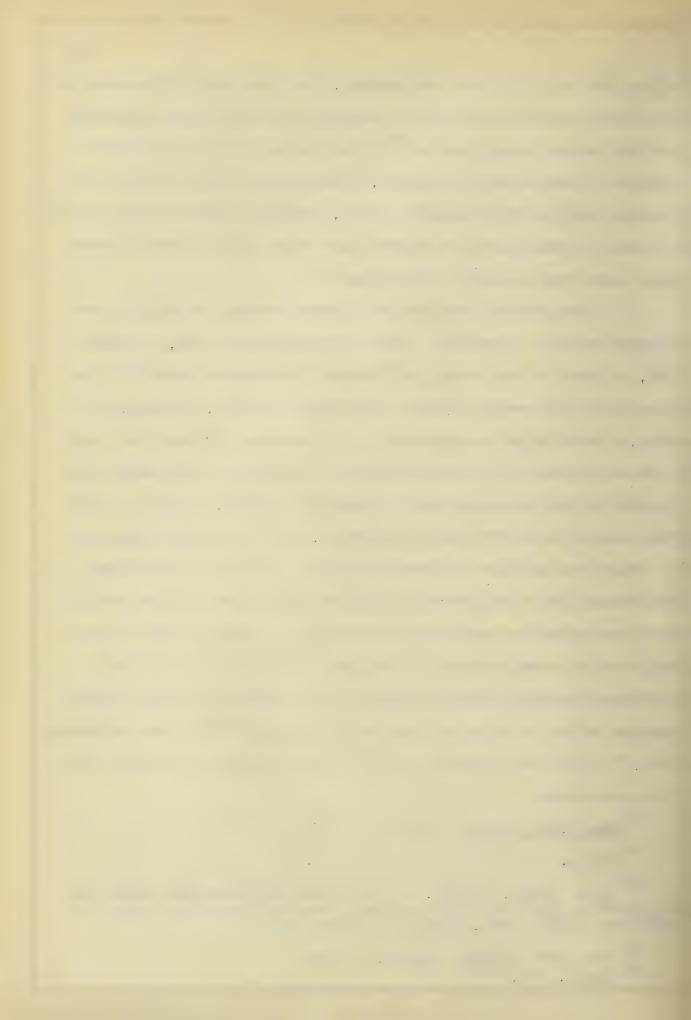
Rog. Hov.; Chron., IV, 23.

²⁸ Ibid., 41.

John. Oxen., Chron., I, 99. He did not keep his word, for he played an important part against the English at the battle of Bouvines. Walt. Hem., Chron., I, 222 note.

Rog. Wen., Flores Hist., I, 188.

³¹ Ibid., III, 25.



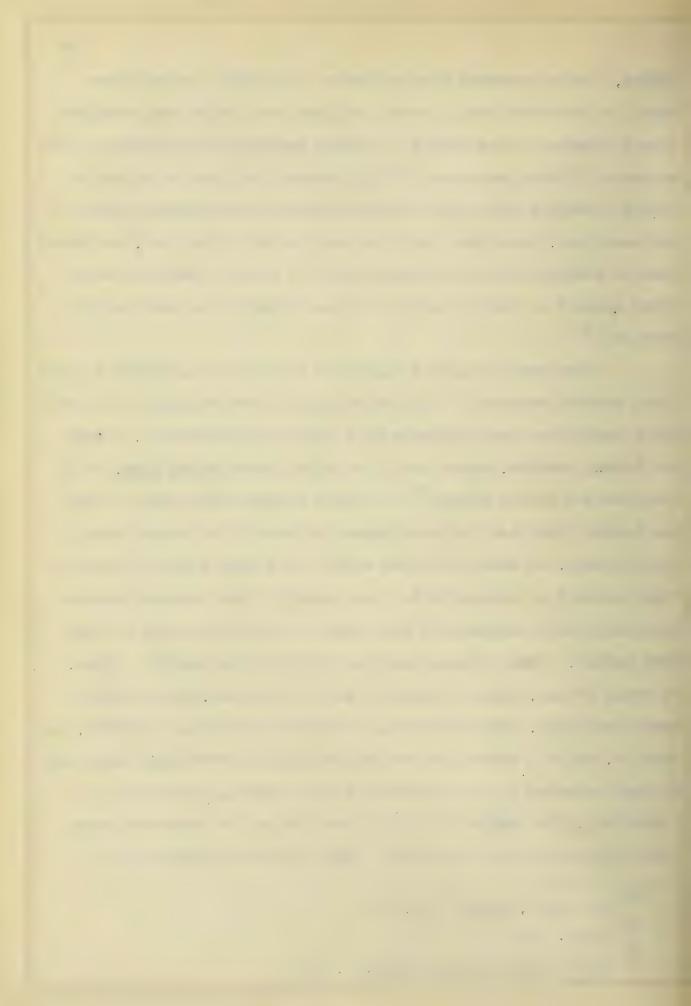
that his foresters should seize and imprison clerks who committed forest offenses as he wished to "exact securities from them in consequence of their so doing." He was not inclined to allow the clergy to make difficulties where finances were concerned, and in the same year, when the clergy refused to pay a land tax, he forced them to submission by providing that if a layman committed an offense against a clerk he should not be compelled to make satisfaction. 33

The early years of King John furnish the material for the first printed reports of the proceedings of the criminal law courts. The records show the existence of a rude and ineffectual, though not bloody justice, exercised in criminal cases coram rege, or by the justices of the bench. 34 By these reports the curtain that has hidden from view the development of benefit of clergy among lower clergy, is suddenly drawn aside. The eyre rolls of the justices exhibit an almost full-grown immunity from secular justice enjoyed by the churchmen of all ranks. In 1200 John, by his letters patent, clearly recognizes the right of the church: "John, by grace of God, King of England, Lord of Ireland, Duke of Normandy and Anjou, Count of Maine, to all his justices, sheriffs, constables, and all other officers and bailiffs, greetings; know that we have conceded to our venerable father Hubert. Archbishop of Canterbury, the custody of all clerks taken, for whatever wrong they are arrested and detained. And we firmly order you to

³² Rog. Hov., Chron., IV, 64.

³³ Ibid., 66.

³⁴ Select Pleas of the Crown, I, XXIV.



turn over to the said archbishop whatever clerks you may have in your custody for whatever offense they may have been arrested if you have any such clerks, and we prohibit that you presume to detain any clerk for any offense after the archbishop shall have demanded him."

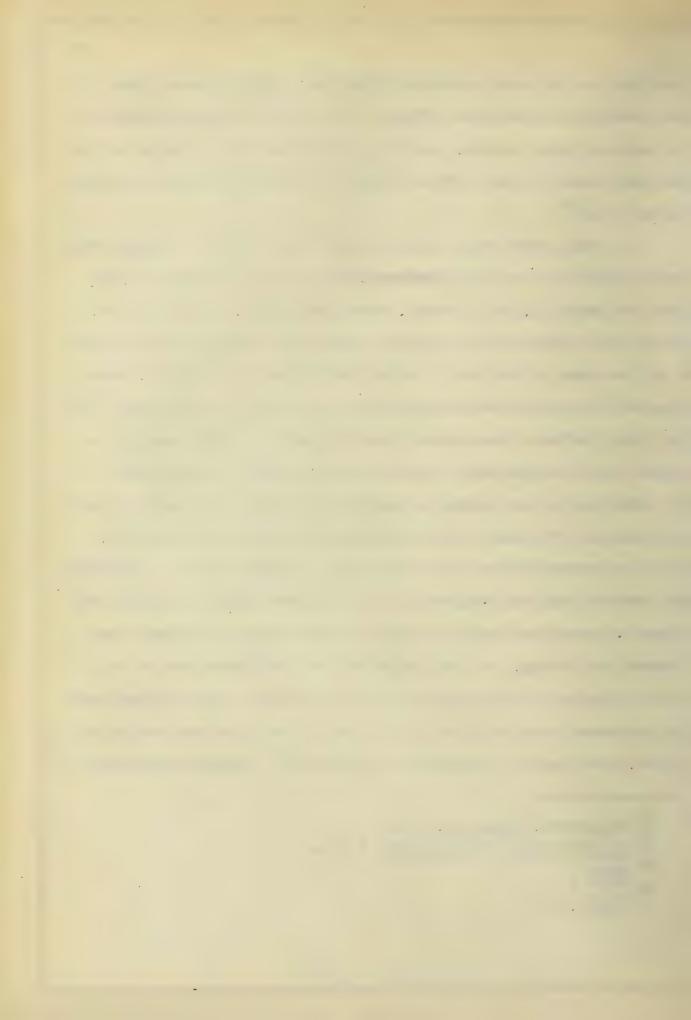
The court rolls indicate that the benefit of clergy was taking definite form. The Bedfordshire roll of 1202 shows that Simon de Ampthill, with others, assaulted Simon, son of Elstow, and on being arraigned on appeal pleaded his clergy and was claimed by the dean of Bedford: 36 also that Gilbert de Flitton, when appealed for murder was demanded as a clerk by the same dean. 37 In the first instance the accused was delivered; in the second the record fails to show what disposition was made of the accused. In the same year a case arose in Lincolnshire that does much to prove that benefit of clergy was securely established and, moreover, that its possibilities were well known to lawbreakers. One Sefrid was arrested and was replevied by his father and three neighbors: later he presented himself before the justices with tonsure and pleaded his clergy, but the judge who had delivered him to bail noted a change in his appearance and on inquiry "his pledges came and confessed that while he was in their plevin he had his crown shaved, and they put themselves in mercy."38 Before King John, at

³⁵ Stapeldon, Register, 274.

³⁶ Select Pleas of the Crown, I, 24.

³⁷ Ibid.

³⁸ Ibid., 19.

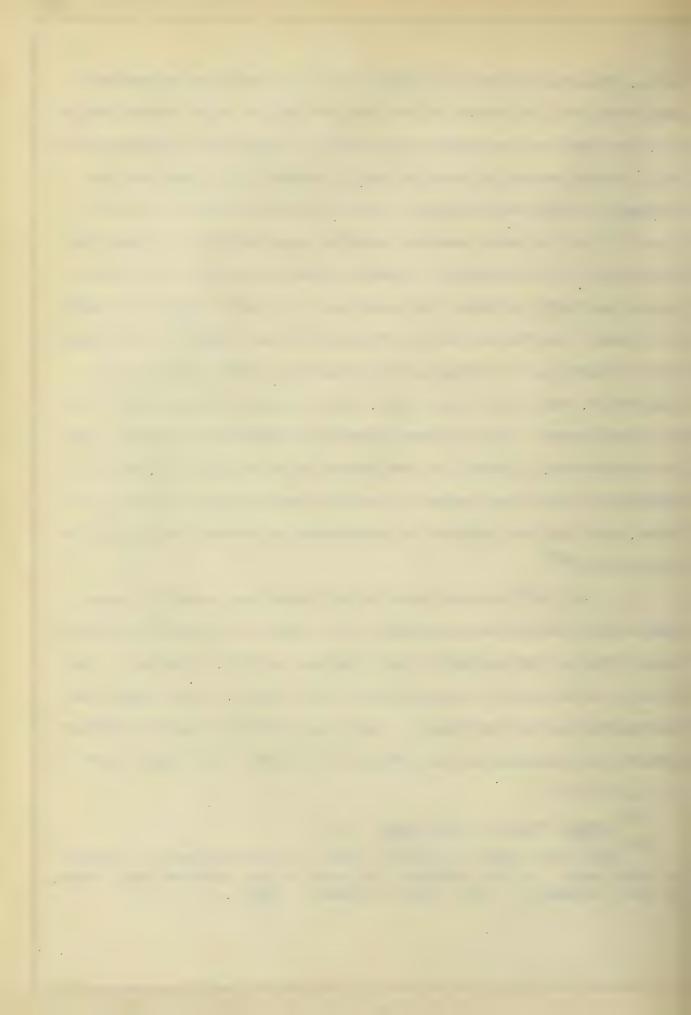


Wells. Juliana de Howell is told that if she wishes to prosecute Hugh Pech for the murder of her son she may do so in court Christian. for Hugh has announced that he is a clerk and a subdeacon and "will defend where and when it shall behoove him." and has been claimed for the ecclesiastical court by the archdeacon of the place. 39 In the same session Swanhild appealed Robert Clerk for the murder of her husband. Robert "comes and says he is a subdeacon and fully defends the death and will defend where he ought to defend. And Master Allen, official of the Bishop of Bath says that [Robert] is a subdeacon and ordained by the Archbishop of Canterbury, who told [Alan] this, and he claims [cognizance for] his lords court. And because he had no sufficient testimony from the archbishop. [Robert] is not handed over to him quit, but is committed to him for production on the [next] coming of the justices, and let him produce the Archbishop's letter testifying the ordination."40

In 1207 a storm broke which threatened severe consequence for the English churchmen. The death of Hubert Walter left vacant the see of Canterbury and Stephen Langton, elected at the bidding of the pope in opposition to the wishes of the king, was consecrated as his successor. The king refused to accept the new prelate and confiscated the estates of his see. The pope then

Select Pleas of the Crown, I,79.

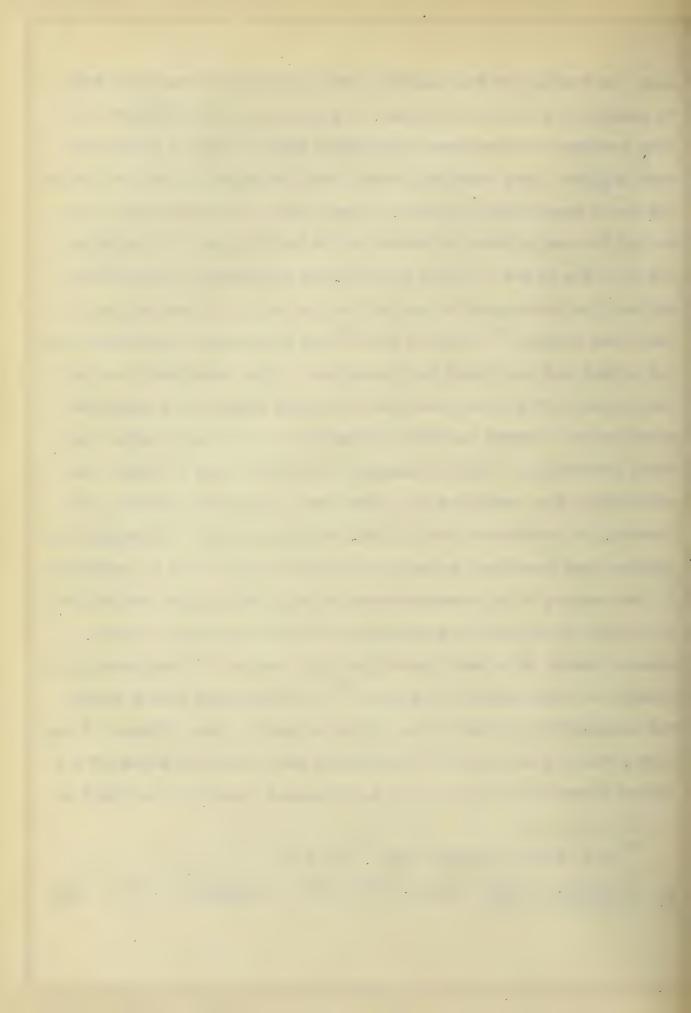
Maitland makes an obvious error in translating the record of this case: he has inserted the name of the murdered man, Hugh, in the brackets where Robert appears. Ibid., 75.



sent the bishops of Winchester, London, and Ely to warn the king to abandon his hostile attitude, and gave instructions that if John remained contumacious the bishops were to lay an interdict upon England. The bishops carried their message to John who swore "by God's teeth" that if they, or any other prelates, should dare to lay his realm under an interdict he would pluck out the eyes and slit the noses of every Roman clerk in England; moreover he advised the messengers to get out of his sight if they valued their own safety. 41 Shortly after this the bishops obeyed the papal orders and published the interdict. John immediately seized the property of all churches and religious houses that suspended services and decreed that the clergy should no longer enjoy the royal protection. The excommunication of the king followed, but publication was suspended for some time. Meanwhile Geoffrey of Norwich, an archdeacon and a clerk of the exchequer, expressed the opinion that beneficed persons endangered their souls by remaining in the service of an excommunicated king. This remark was reported to John who caused the archdeacon to be thrown into prison. where a leaden cope was placed upon his head and he was gradually crushed to death under its weight. 42 In this same year a woman was accidentally killed by an Oxford student. The officers of the crown, failing to find the unfortunate man, arrested three of his fellow clerks and a short time later hanged them, "in contempt of

Rog. Wend., Flores Hist., II, 46.

¹bid., 52; Ann. Osen., 1209 (Luard, Annales, IV, 54); Ann. St. Edmunds, II, 25.



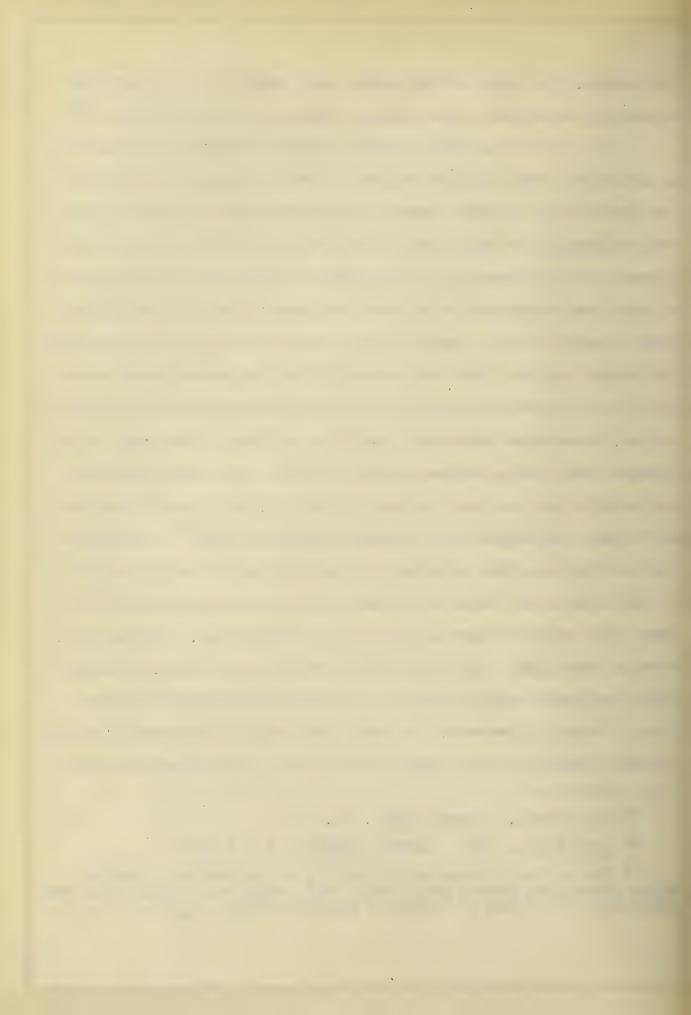
the church," by order of the king. As a result of this act the university moved away from Oxford, "leaving the city vacant." 43

In 1211 the pope sent the legate Pandulph to England in an effort to settle the questions at issue between the king and the church. The legate demanded the recognition of Langton and the restoration of the rights of the church as the price for the removal of the interdict. John refused these terms and threatened to hang the archbishop if he ever set foot in England, but added that he was willing to accept any nominee of the pope save Stephen. The legate replied that the church did not degrade without cause and that, unless the king came to terms, the sentence of excommunication, heretofore suspended, would be published; the pope, he announced, would then release John's subjects from their obedience and send an army against England. The king, in a rage, threatened to hang the legate, but Pandulph remained firm. 44 To terrorize him the king then ordered his sheriffs and foresters to bring in their prisoners whom he condemned to terrible punishments.45 Among the prisoners was one clerk, a counterfeiter, and the king, "having knowledge of his character, ordered him flayed, thinking that the legate would revoke his condemnatory sentence through fear." Pandulph, however, at once made ready to excommunicate all who laid hands upon the clerk and left the room to seek the nec-

⁴³ Rog. Wend., Flores Hist., II, 51.

⁴⁴ Ann. Burt., 1211 (Luard, Annales, I, 209-16).

^{45 &}quot;De quibus quosdam eruit oculos, alios abscidit brachia, alios nares, vel aures, vel tibias, vel pedes, vel aliquo alio modo deformavit, et totum ad terrorem legatorum." <u>Mul. Hist.</u>, III, 100.

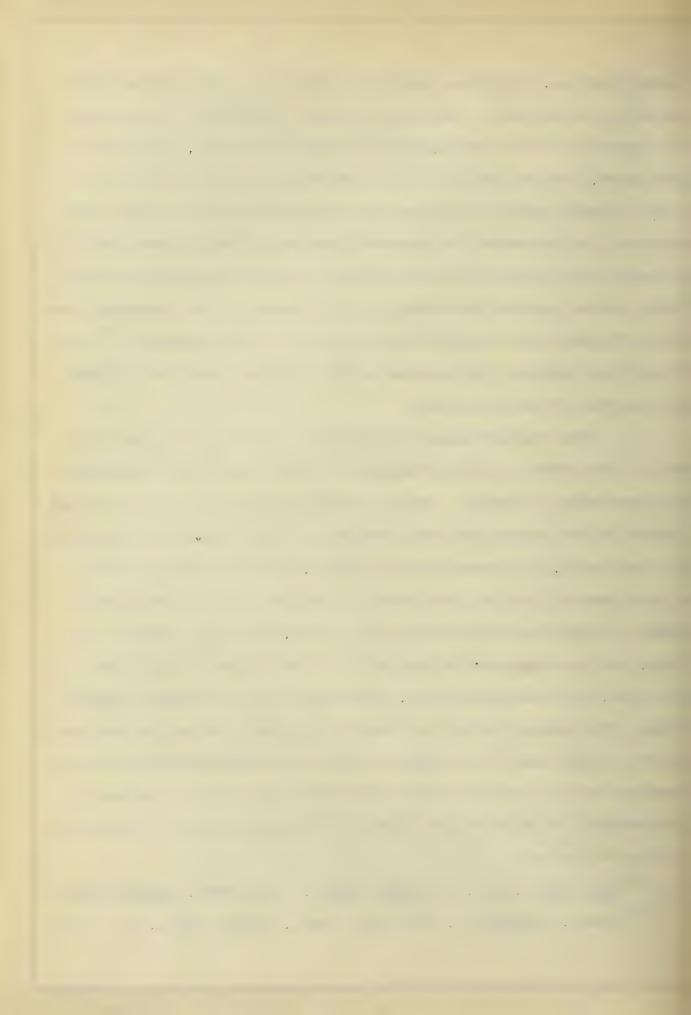


essary candles, whereupon the king recalled him and delivered the clerk to his custody. The legate at once dismissed the prisoner "in peace and free from fault." In 1213 the king, now excommunicated, seeing that the pope intended to put into effect the other threats made by the legate in his name, made an abject submission: he consented to receive Archbishop Stephen; restored the property confiscated from the church; revoked the decree of outlawry issued against the clergy; paid damages to the churchmen who had suffered at his hands during the time of the interdict; 47 and finally surrendered his kingdom to the pope and received it back as the fief of the Holy See.

won by the church in the struggle with John equals that gained by the martyrdom of Becket. In the earlier contest only the judicial rights of the church had been involved; in the latter the position of the church, the powers of the papacy, and the rights of the clergy were all called into question before the controversy was ended. Becket had been forced to contend, not only against the king, but also against the majority of the higher clergy; the prelates, with few exceptions, had united in the struggle against John. The former victory had been limited but the latter was complete. John passed his remaining years in dependence upon the papacy and at his death the Roman churchmen were able to assume a predominant position in the affairs of his minor son. The English

^{46 &}lt;u>Eul. Hist.</u>, III, 100; <u>Ann. Burt.</u>, 1211(Luard, Annales, I, 217).

⁴⁷ Rymer, Foedera, I, 174; Rog. Wend., Flores Hist., II, 70-73.



ecclesiastics soon realized that this situation was not to their advantage, for the advisors of Henry III were little interested in the affairs of the English church, save as it was a field for the collection of taxes. The Englishmen therefore made a distinction: they would support any measure that was for their own benefit, but would resist papal extortion as far as such resistance was possible. This explains why men such as Grosseteste were found ardently supporting benefit of clergy, which was canonical, and bitterly opposing papal taxation, which was illegal.

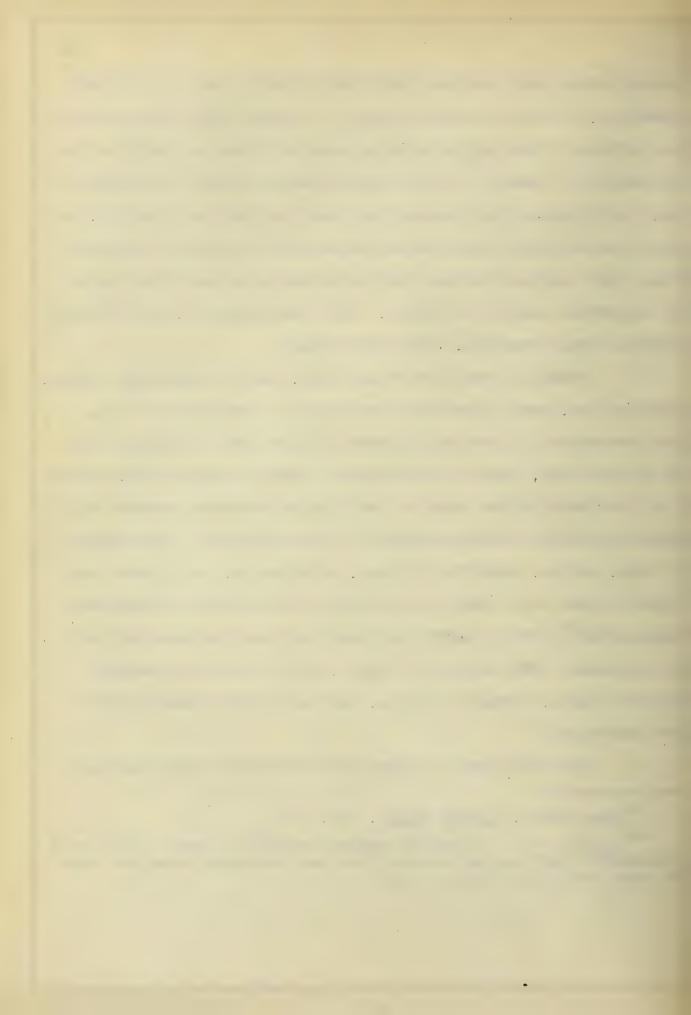
Taxation from Rome began early, and the oppressed people, high and low, soon joined with the clergy in opposition to it.

The persecution of the papal agents and the Roman clergy was one of the favorite, though less honorable means of resistance, and in 1232 the theft of the grain of the foreign churchmen assumed such proportions that the pope demanded an investigation. As a result of this, nobles, sheriffs, bishops, archdeacons, and priests were found to have had a hand in the thefts; even Hubert de Burgh was implicated. It is doubful how many were sent to Rome for trial in accordance with the pope's orders, but at least one accused prelate, Roger, bishop of London, went to the Holy See to prove his innocence.

In 1232 Hubert de Burgh was driven from power and the

⁴⁸ Rog. Wend., Flores Hist., III, 27.

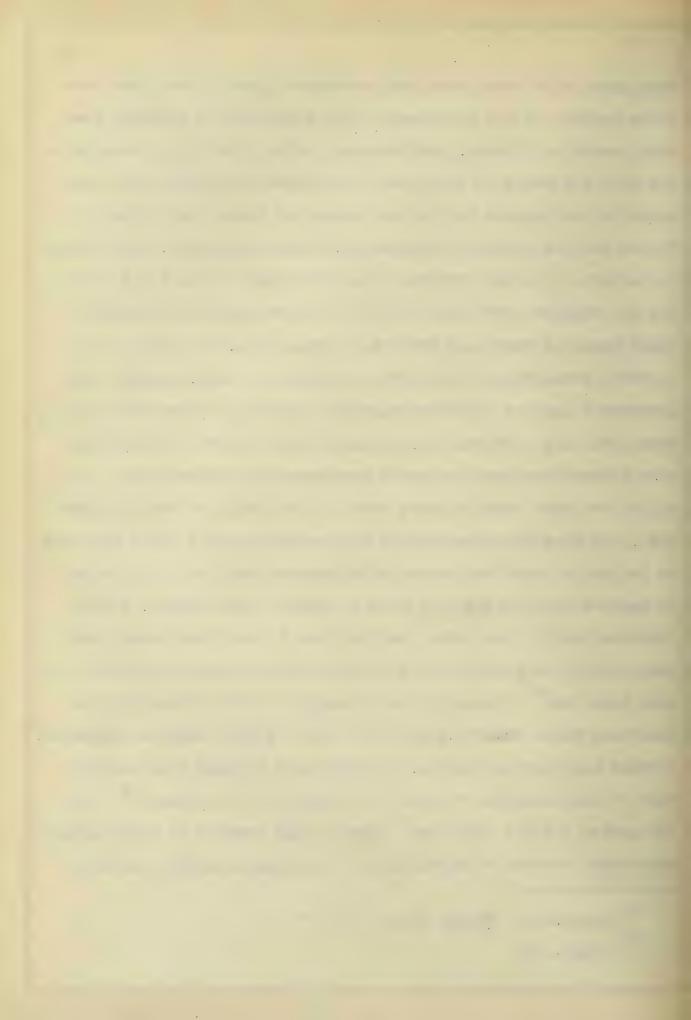
¹⁹ Ibid., 47. It does not appear that any of the robbers were punished by the secular courts; they were excommunicated and made to seek absolution from the pope.



foreigners with whom Henry had surrounded himself came into complete control of the government. The result was a baronial revolt headed by Richard, Earl Marshal, which practically came to an end with the death of the leader in Ireland two years later. Apparently the kingdom was in the control of three men; Peter de Roches who was bishop of Winchester, Peter de Rievaulx, and Stephen de Segrave. The last two were also churchmen but in their struggle for secular power their clerical duties had been forgotten. Their memories were soon revived. Edmund Rich, who had been consecrated archbishop of Canterbury on April 2, 1234, assumed the leadership against the foreigners and appearing before the king a week after his consecration, announced that unless the Poitevins were driven from court he would pronounce him excommunicate. At almost the same time the king heard of the death of the Earl Marshal, for whom he entertained a deep affection, and these two causes led him to send the bishop of Winchester back to his diocese, to deprive Peter de Rievaulx of his numerous sheriffdoms, and to threaten that if the latter had not been a beneficed person and admitted to the rights of the clergy he would have ordered his two eyes torn out. 50 Realizing their danger the two Peters fled to sanctuary while Segrave sought the church of St. Mary at Leicester, resumed his clerical duties, and once more assumed "the chaplet that he had abandoned without the consent of the bishop."51 the matter did not end there. Rievaulx was brought to Westminster under safe conduct to stand trial. He appeared before the king

Rog. Wend., Flores Hist., III, 79.

bl Ibid., 90.



cused him of being guilty of the death of the Earl Marshal and of many other crimes and ordered him to be confined in the Tower.

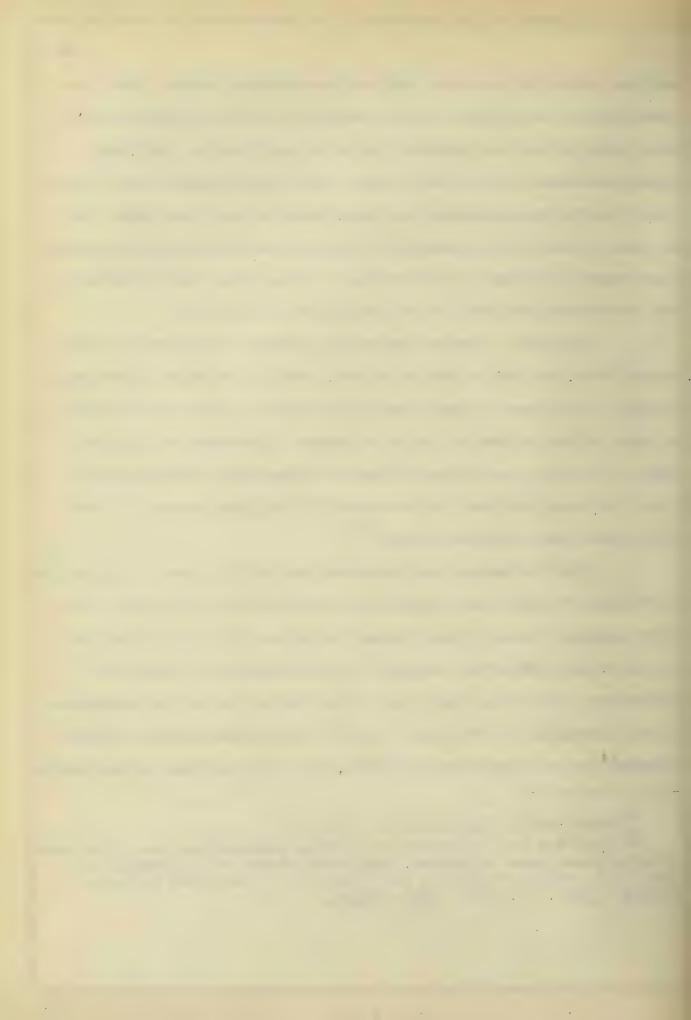
Peter protested that he was a clerk, and the king was about to deliver him to the archbishop as such, when it was discovered that he wore a coat of mail under his clerical habit; he was accordingly imprisoned but after a brief sojourn in the Tower was released by the archbishop and sent to the church at Winchester. 52

In 1237 a quarrel broke out between the servants of the legate Otho, who was visiting Oxford, and the students of the university. The legate's cook was killed and he himself was forced to take refuge in the belfry of a church. Released by knights sent by the king he excommunicated all those who had assaulted him. The king punished the students by the imprisonment of Odo of Kilkenny and eighteen others. 53

The following year occurred another instance in which the privilege of clergy was denied to a guilty clerk. An Oxford student feigning insanity was allowed to loiter about the royal palace at Woodstock; after learning the arrangement of rooms, he evaded the guards one night and gained admission to the bedchamber usually occupied by the king. On this particular night the king happened to be in another apartment, and the clerk was seized while

Rog. Wend., Flores Hist., III, 91.

⁵³ This was not an arrest to enforce excommunication. "Rex vero propter pacem suam infractam, magistrum Odonem de Kilkenny..... cum XVIII. aliis scolaribus capi fecit et in carcerem detrudi." Flores Hist., II, 225; Chron. Melsa, II, 73.



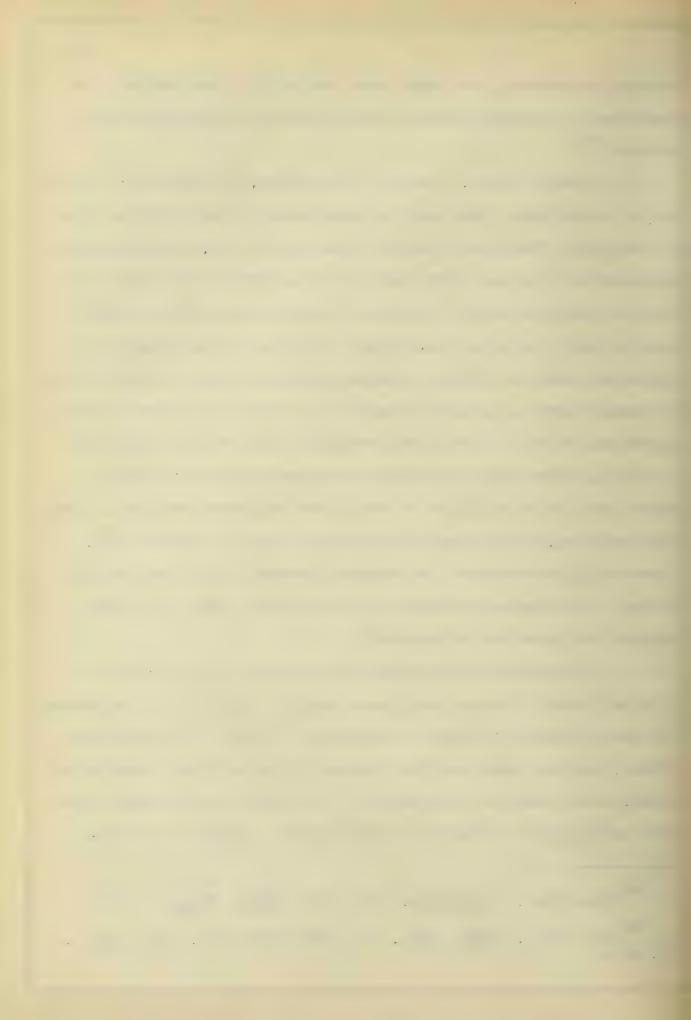
violently attacking the empty royal bed with a long dagger. He was taken to Coventry and was there condemned and executed as a traitor. 54.

Ralph Briton, a canon of St. Pauls, was accused of treason by a convicted felon and was imprisoned in the Tower by order of the king. The dean of London, hearing of this, at once excommunicated all who had taken part in the arrest of the canon and laid St. Pauls under an interdict. The attitude did not sufficiently alarm the king, and it was only when the archbishop of Canterbury and the bishop of London prepared to lay the whole city of London under an interdict that he consented to deliver the suspected man to them. Henry then demanded that Briton be held in custody in order that he might be produced whenever the king should see fit to call him to trial; the churchmen refused to hear any condition, and at last the king was forced to restore him, "absolutely free as when the king's attendants tore him from his house." His accuser confessed on the scaffold that the charge against the canon was unfounded. 55

Though Henry III generally gave way in the matter of clerical immunity there were times when his respect for the church led him in wholly different directions. In 1251 the Carthusian friars, who had grown wealthy through the uncanonical practice of usury, fell under the displeasure of the king; on the ground that they had committed treason by polluting his kingdom with their

Ran. Hig., Polychron., VIII, 213; Chron. Melsa, II, 73.

⁵⁵ Mat. Par., Chron. Maj., III, 543; Mat. Par., Hist. Angl., II. 423.

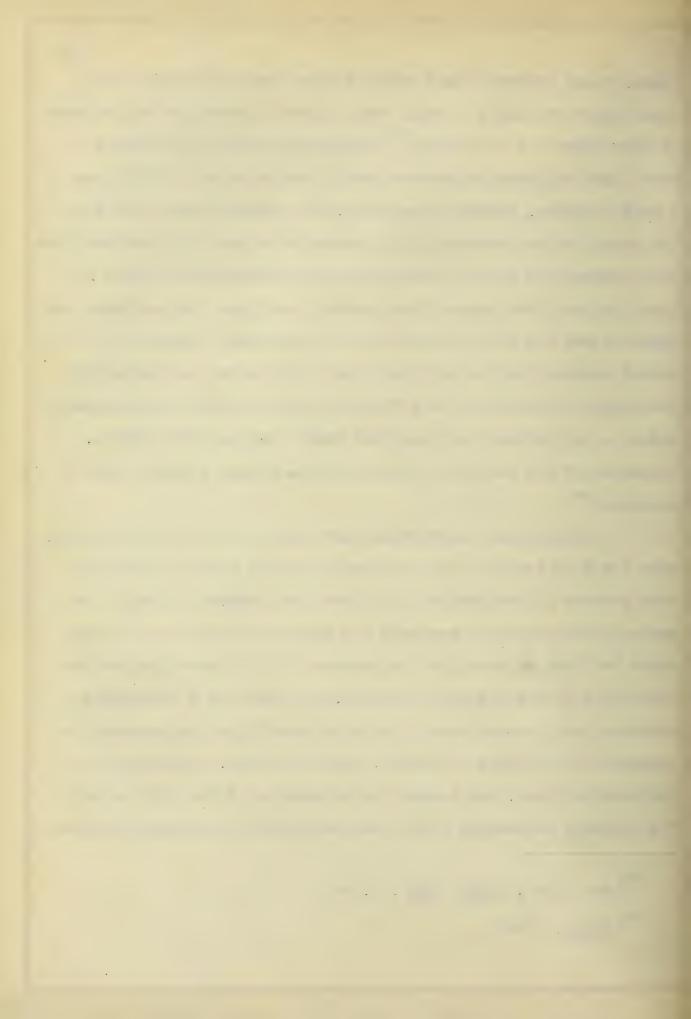


when they were unable to deny their usurious practices he had many of them committed to prison. Sometimes he was influenced by other than religious considerations. The prior of Thetford was a hard drinking, brawling, Savoyard, who claimed relationship to the queen; he was constantly in trouble with his monks and was finally murdered by one of them whom he had attempted to banish to Cluny for no other reason than personal dislike. The murderer was arrested and the king, "worried by the continual complaints of the queen" ordered that he be blinded and then thrown in chains into the prison of Norwich. Thus the unfortunate priest was condemned before a lay tribunal and punished twice for the same offense, in violation of the two principles which St. Thomas gave his life to maintain. 57

In 1255 an interesting case arose in the city of London, when the king levied a fine of three thousand marks on the citizens because of the escape of a clerk from Newgate prison. The excuse of the citizens presents the matter in full detail. The clerk had been arrested at the instance of the queen for the murder of one of her distant relatives, the prior of a Franciscan monastary on the continent. The king himself had surrendered the accused to the bishop of London, and the latter, not having a satisfactory gaol, had begged the permission of the city to keep his prisoner in Newgate until the case should be properly settled.

⁵⁶ Mat. Par., Chron. Maj., V, 245.

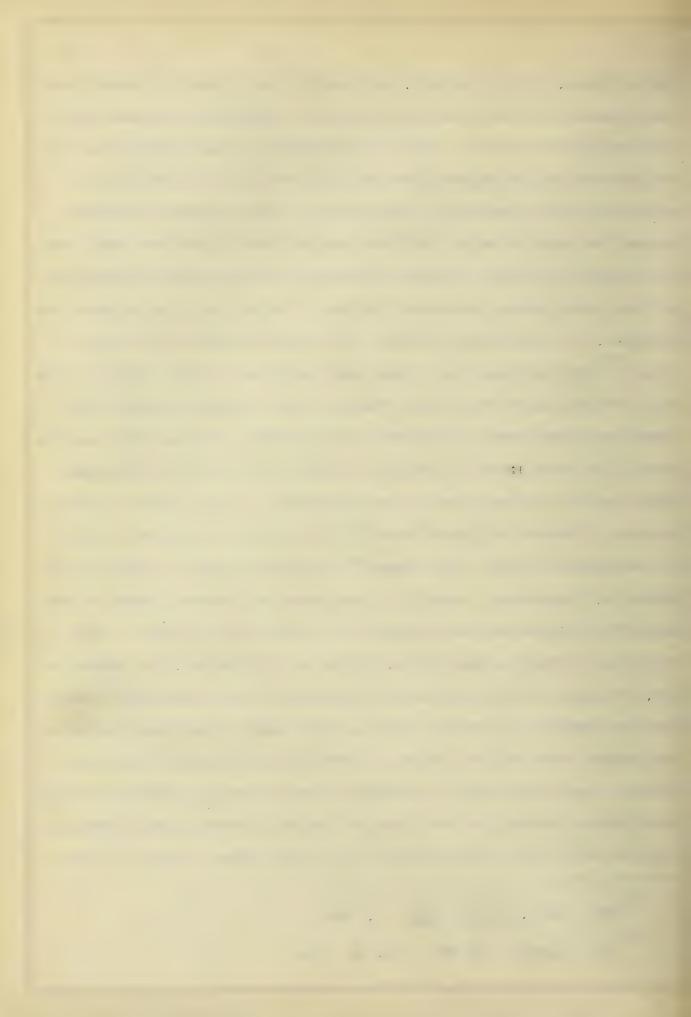
^{57 &}lt;u>Ibid.</u>, 31-33.



The citizens, out of respect, had granted the bishop's request and the prisoner had later made his escape by deceiving the guard set over him by the bishop. Once out of prison he had taken refuge in the convent of the Friars Minor who had received him and had invested him with the habit of the order. The citizens therefore begged the king to relax the fine against them since the fault was not theirs: but Henry instead of granting their request threw some of them into prison whereupon the rest "vented their anger upon the brethern, to their great injury, for having sheltered the fugi-The explanation of the Londoners was without doubt a true one, for the close rolls give evidence that secular prisons were sometimes given over to the use of the church. In one instance the sheriff of Nottingham is ordered to place the gaol of Nottingham castle at the disposition of the archbishop of York "for the safe keeping of clerks delivered to him by the king's justices so that he can exhibit them to the same; "59 a similar grant is made to the bishop of Chichester, though in this case the orders issued to the sheriff of Sussex are more explicit. "The king concedes to the venerable father in God, Ralph, Bishop of Chichester, his chancellor, the gaol of the king in the bailwick of the sheriff of Sussex, for the placing in the same gaol by the hands of the said bishop of two clerks taken on the charge of homicide and held in the king's prison. And the sheriff is ordered, that, when the official of the said bishop, acting in the place of the said bishop, shall bring to him the said clerks who are about to be delivered to him, he shall

Mat. Par., Chron. Maj., V, 486.

⁵⁹ Rot. Claus., 19 Hen. III, p. 143.



receive them and keep them in safe custody in the said prison until the king shall order otherwise." 60

william Bussey who was the seneschal of William de Valence was brought before the justices, accused of many crimes, "and as he could make no satisfactory answer to the charges brought against him....he wished to undo the fastenings of his coif to exhibit publicly that he had the tonsure of a clerk." He was not permitted to do so but was dragged away by an officer who asked:

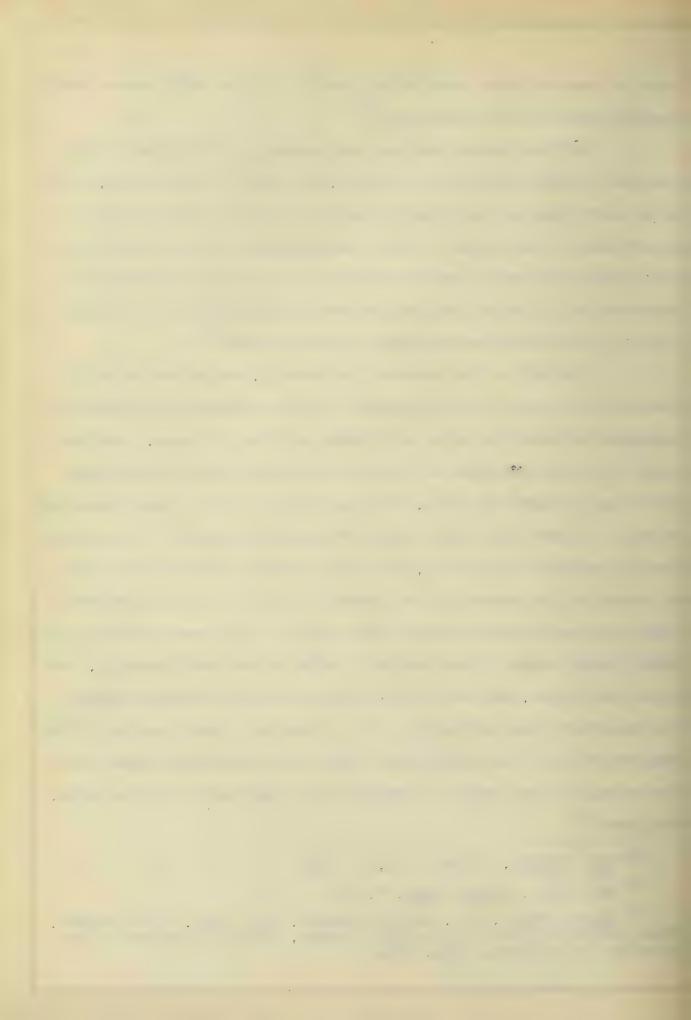
"If I do you injustice who shall do you justice?" 61

In 1272 a riot occurred in Norwich, which led to an investigation by the king in person. The disturbance had begun with a quarrel between the monks of Norwich and the citizens, over the right to judge offenders at the fair. The monks then armed themselves and invaded the town, killing several of the inhabitants and driving the rest into their homes. The mayor assembled the citizens for the defense of the city, but the aggrieved townsmen then made an attack on the priory in the course of which the buildings were fired and the cathedral church was burned. As a result of the inquiry thirty-three of the burghers suffered the death penalty, one woman was burned, and two priests who had led the attack against the monastery were delivered to the bishop as clerks convict. The temporalities of the priory were taken into the king's hands until the prior, who had been the leader in the aggression of the monks, resigned.

⁶⁰ Rot. Claus., 20 Hen. III, p. 282.

⁶¹ Mat. Par., Chron. Maj., V, 738.

⁶² Flores Hist., III, 25-26; Dugdale, Mon. Ang., IV 4. Trivet, whose father was one of the trial judges, makes no mention of the priests. Nic. Triv., Ann., 279.



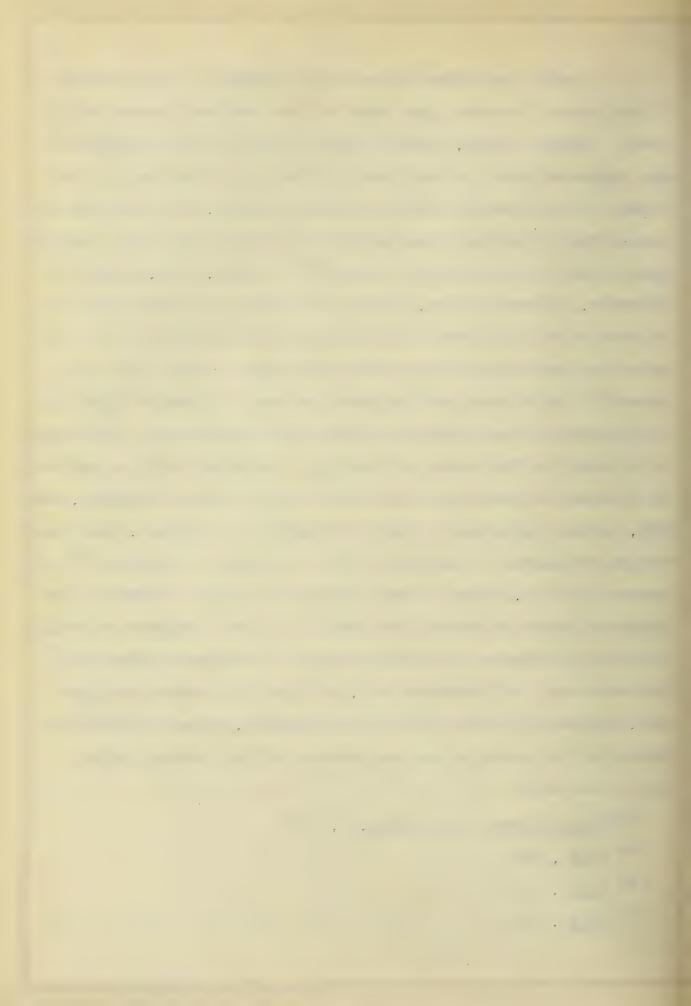
Among the clergy who were not important in the affairs of the kingdom the privilege seems to have been very generally allowed. Thomas of Dean, appealed for the murder of the brother of Hugh Hoppeoverhumbr' in the forest of the Earl of Warrene, is delivered to the bishop of Chichester as an acolyte, in order that the bishop "may do justice respecting him to everyone who shall complain against him in ecclesiastical court."63 In 1221, Hugh, parson of Pillerton, in Warwickshire, claims his clergy in a murder case but consents to tell the truth to the court without pleading, and, because the four townships agree that his story is true, he is released. 64 In the same roll appears the case of Nicholas Bigot who is delivered for safe keeping to the abbot of Leicester, who appeared on behalf of the bishop of Coventry. The abbot fails to produce the prisoner at the proper time and is put in mercy. Nicholas, however, appears later and is again delivered to the bishop, this time through the agency of the dean of the archdeacon of Coventry. 65 Somerset in 1225. Robert of Orr pleads his clergy in answer to the charge of murdering Walter, the chaplain of Orr. Judgment in respited but he is retained in custody because no ordinary claims him. 66 The assize roll of Northumberland, 40 Henry III, shows that Margery, who was the wife of William of Cramcruk, appealed Richard de Hutton for the wounding and imprisonment of her husband, which

Select Pleas of the Crown, I, 120.

⁶⁴ Ibid., 102.

⁶⁵ Ibid., 103.

⁶⁶ Ibid., 119.



resulted in his death. "Et Ricardus venit et clericus." "And concerning this matter comes the official of the bishop of Durham, and by letters patent of the bishop petitions him as a clerk and he is liberated to him." 67

It is evident, however, that at times the church had difficulty in obtaining the custody of accused clerks, both before and after appearance in the secular courts. The king sends letters to the sheriff of Suffolk ordering him to deliver to the bishop of Norfolk three clerks held in prison for manslaughter and to the sheriff of London, commanding him to surrender to the bishop of that diocese a clerk accused of impairing money. 69 By a similar order in 1246, it is made clear that the delivery is to be made to the bishop on condition that he insure the appearance of the accused before the justices. 70 In 1244 the sheriff is ordered to release six clerks to the archbishop of Canterbury: "if they have been arrested they shall be delivered without delay and if they have not been taken [already] they shall not be taken."71 In another instance he appointes special justices to deliver his prison at Newcastle of chaplains and clerks and "to liberate these to the bishop or his official for such proceedings in ecclesiastical court as should be taken according to law."72

North. Assize Roll,, 40 Hen. III, p. 91.

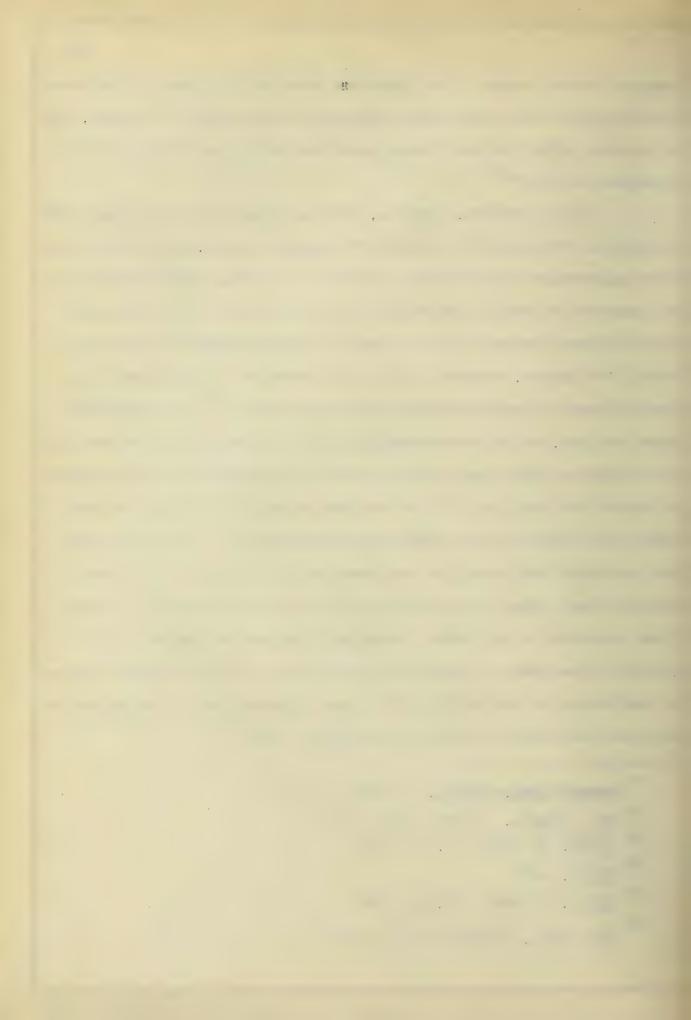
⁶⁸ Rot. Claus., 27 Hen. III, p. 71.

⁶⁹ Ibid., 31 Hen. III, p. 541.

⁷⁰ Ibid., 449.

^{71 &}lt;u>Ibid.</u>, 29 Hen. III, p. 193.

⁷² Rot. Pat., 18 Hen. III, p. 76.



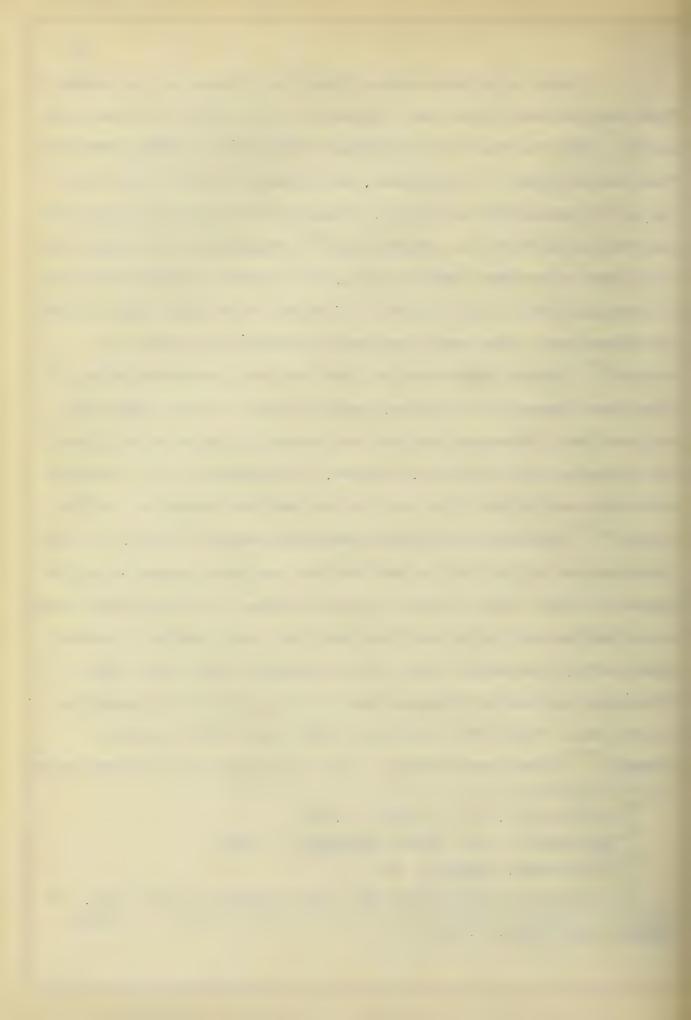
There is evidence aside from the protests of the clergy that the justices placed many obstacles in the way of clerical immunity. Statutes were twice enacted during Henry's reign providing that the sureties of a churchman, who refused to plead in a secular court because of his clergy, should not be amerced if they had his body in court at the proper time. 73 Frequently the judges forced clerks to undergo judicial duel, and as early as 1237 the clergy complain that in the diocese of Carlisle "not only simple clerks but abbots and priors are compelled to fight with lances and swords." 74 Bishop Bronescombe in 1260 "solemnly excommunicated all those who decreed that William, called Blundun, should submit to duel and made him submit against the canons, along with all those who counseled this or aided, favored, or consented to it, and also those who carried out this duel to the manifest scandal.... of the church."75 Sometimes the clergy themselves were at fault, for the Lincolnshire roll of 1220 shows that two men were charged with the murder of their lord by two of their fellows. A day was given them to do battle with their appellors and they were ordered to appear armed before the court. When first arraigned they were in lay dress and they neither claimed their clergy nor were demanded by an ordinary; "but after the battle they said that they were clerks." In another instance a thief was taken on a stolen horse;

^{73 43} Hen. III, 27; 52 Hen. III, 27.

⁷⁴ Ann. Burt., 1237 (Luard, Annales, I, 256).

⁷⁵ Bronescombe, Register, 30.

⁷⁶ It may be supposed that they were defeated in the duel, but the roll offers no clue to the disposition of the case. Select Pleas of the Crown, I, 129.



he claimed that he was a deacon but later turned approver to fight five battles. 77

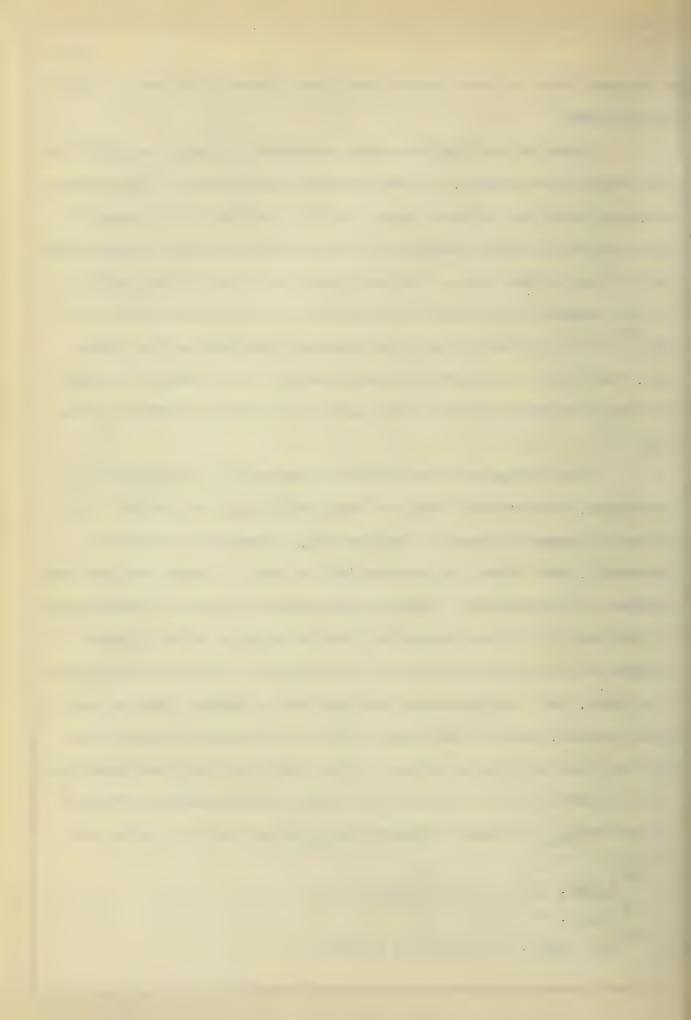
Even as the justices were reluctant to grant an unlimited privilege to the clergy, so the churchmen were easer to take every advantage that was offered them. In 1221 the abbot of Bordesly took a murderer out of sanctuary in the church of Stone wearing the cowl of one of his monks. He was fined for this by the justices and the township suffered a like penalty for permitting the escape. It is probable that the murderer remained in the monastery, for later a fugitive who had escaped to the abbey of Chichester was forced to remain there as a lay brother by order of the king.

The clergy even succeeded in weakening, though not in destroying, the barrier that had been set up against benefit of clergy in forest offenses. One Gervais, a servant of John of Crakeshall, was taken for hunting in the king's forest and was imprisoned at Huntington. Shortly afterward the vicar of Huntington and the bailiff of the bishop of Lincoln appeared with lighted candles and books in their hands demanding the delivery of Gervais as a clerk, and the foresters who had him in charge, fearing excommunication, made no resistance when the churchmen entered the gaol and took out the prisoner. Later the vicar was arraigned before the justices of the forest for this offense but the official of the bishop of Lincoln appeared and claimed him as a clerk and

⁷⁷ Select Pleas of the Crown, I. 92.

⁷⁸ Ibid., 86.

⁷⁹ Rot. Pat., 19 Hen. III, p. 116.



the vicar was delivered to him. 80 The way was not always so smooth for the churchmen, however, for Philip Lovel, a clerk and an officer of the king, was fined an enormous sum for offenses which he had committed in the royal forest. 81

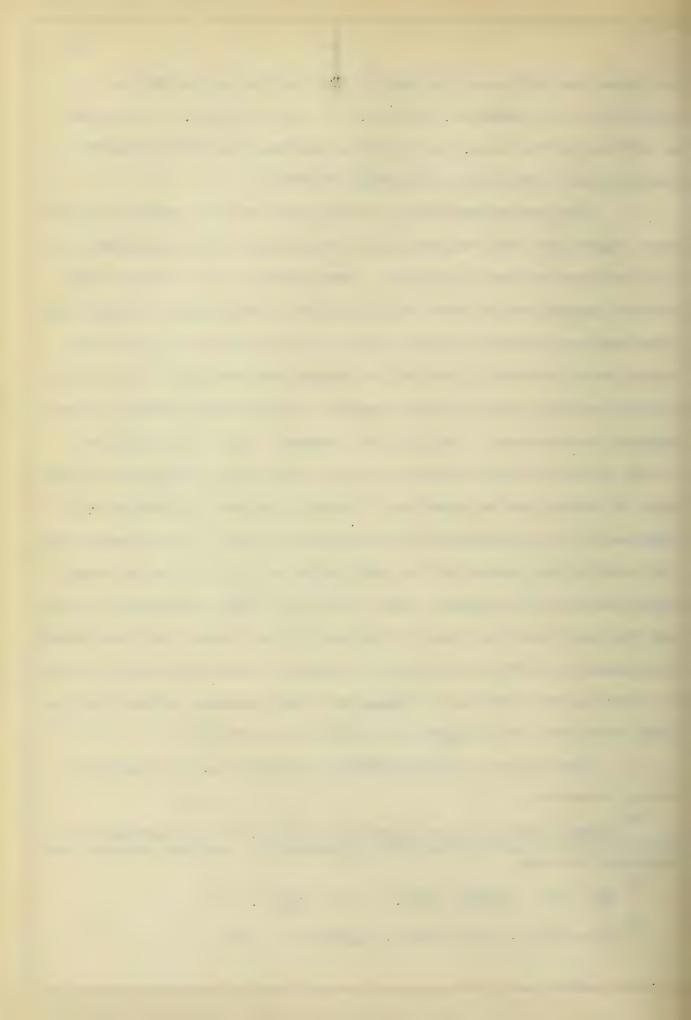
The wrongs suffered by the clergy and the remedies which they sought are best understood by considering the demands made by the local and national councils. From these it will appear that certain encroachments were made upon their privilege, to which the churchmen was bound to object; but it will also be seen that the clergy were constantly seeking to extend the exemption which they already enjoyed until it would amount to a complete immunity from secular jurisdiction. In 1237 at a council held in London the clergy petitioned the legate of Otto to use his influence with the king to obtain the reformation of certain abuses that existed in the realm to the detriment of the clerical order. They complained that clerks were compelled to take oaths and even to purge themselves before lay justices: that they were often imprisoned by laymen who said that they were disturbers of the peace; and they added the request that "neither clerks in sacred orders nor other clerks in clerical habit should be hanged, as often happens, unless they be first convicted and degraded in their own court."82

The clergy of the diocese of Litchfield, in council in

Select Pleas of the Forest, 12; ibid., 78. It appears that the only one to suffer was John of Crakeshall, who was amerced for harboring Gervais.

⁸¹ Mat. Par., Chron. Maj., V, 714; ibid., 731.

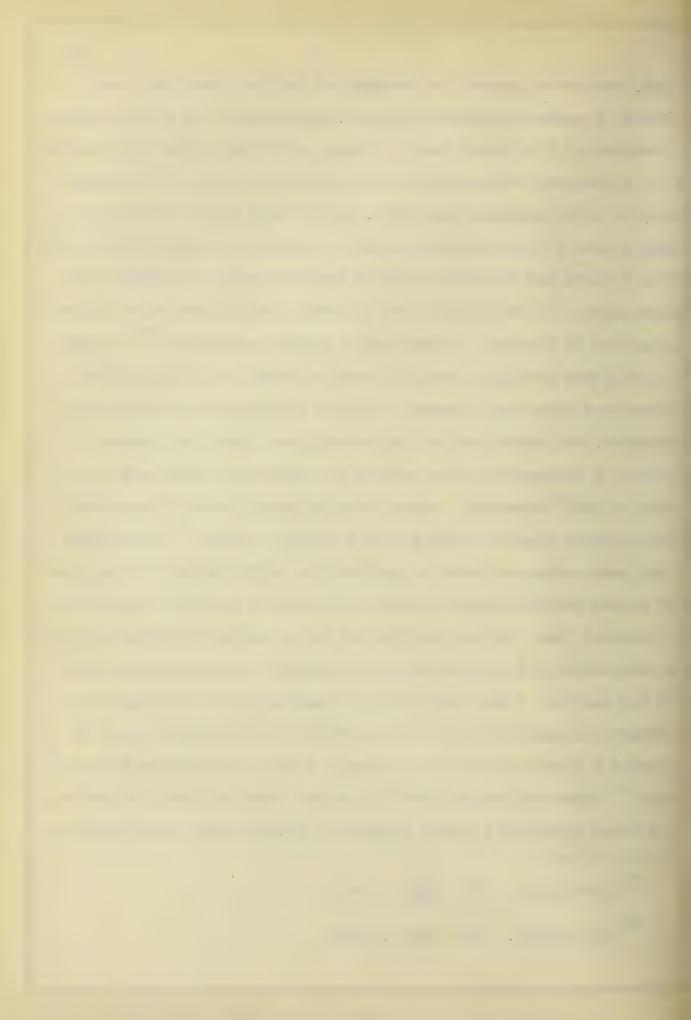
⁸² Ann. Burt., 1237 (Luard, Annales, I, 255).



1255, protested against the attempt of the lay power to force clerks to answer in criminal causes, and against the unjust administration of the forest laws by reason of which clerks were amerced by the justices when neither confessed or convicted and sometimes when not even summoned: moreover, the bishops were distressed to compel them to force the appearance of clerks in forest courts; and when a clerk was fined the bishops were compelled to settle the amercement. To this they added a demand that clerks be no longer compelled to respond to civil suits in the lay courts. 83 In 1257 the king was sorely in need of money to carry out his Sicilian scheme and asked for a council to vote a subsidy from the clergy. Boniface, the archbishop of Canterbury, sent with the summons to council a statement of the matters of importance that were to come up for discussion. Among these appeared several concerning the injuries done the clergy by the secular judges. He proposed that some action be taken to prevent the confiscation of the goods of clerks acquitted by the church courts, and even went so far as to suggest that the confiscation of the property of clerks convicted and degraded by ecclesiastical tribunals was in contravention of the law that a man should not be punished twice for the same offense; he added that it was impossible for a secular court to deprive a clerk of his goods since it never had cognizance of his case. 84 When the council met it did not take any decisive action, but after making the king a present of 42,000 marks asked that he

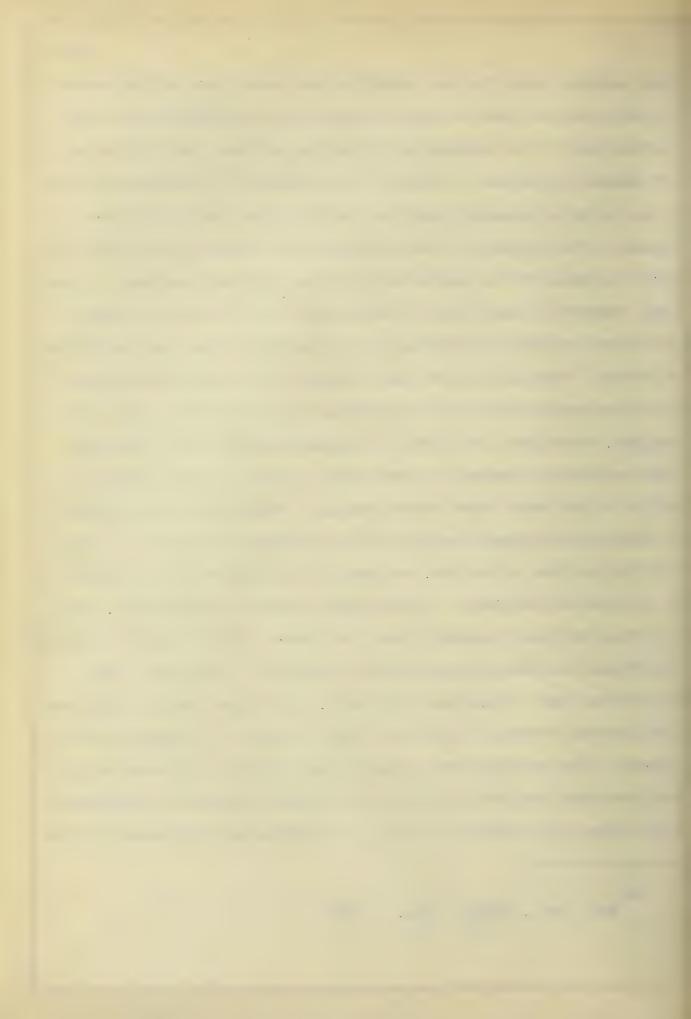
Ann. Burt., 1257 (ibid., 362).

⁸⁴ Ann. Burt., 1257 (ibid., 413).



take certain steps for the remedy of the conditions of the church. The king replied that as soon as possible he would moderate the oppressions of the church; and depending on this feeble promise the council proceeded to draw up its demands. 85 Prefacing the articles with a statement that the "walls of the church had been shaken by the engines of the secular power, and that they must be built up again by the statutes which the king had promised to pass" they composed a long list of canons which never went into force and which are only interesting as a commentary upon the conditions existing. Complaining that lay tribunals interfered in matters which belong exclusively to ecclesiastical jurisdiction such as perjury, sacrilege, and cases of excommunication, they provided that no prelate summoned to the king's court to answer for his action in any such cause should appear. Should the king attempt to force an appearance he was to be excommunicated after a proper warning has been given him, as should all officers who attempted to enforce his mandates. If the king continue contumacious, then the prelates should assemble and, beginning with the royal estates, should lay the whole kingdom under interdict. The forest laws formed the basis of another complaint, and it was decided that the justices who refused to deliver clerks accused of offenses in the forest to the ordinary should be excommunicated. The same policy was denounced against all who should outlaw clerks for non-appearance before the secular justices. Provision was also made for the

⁸⁵ Mat. Par., Chron. Maj., V. 637.

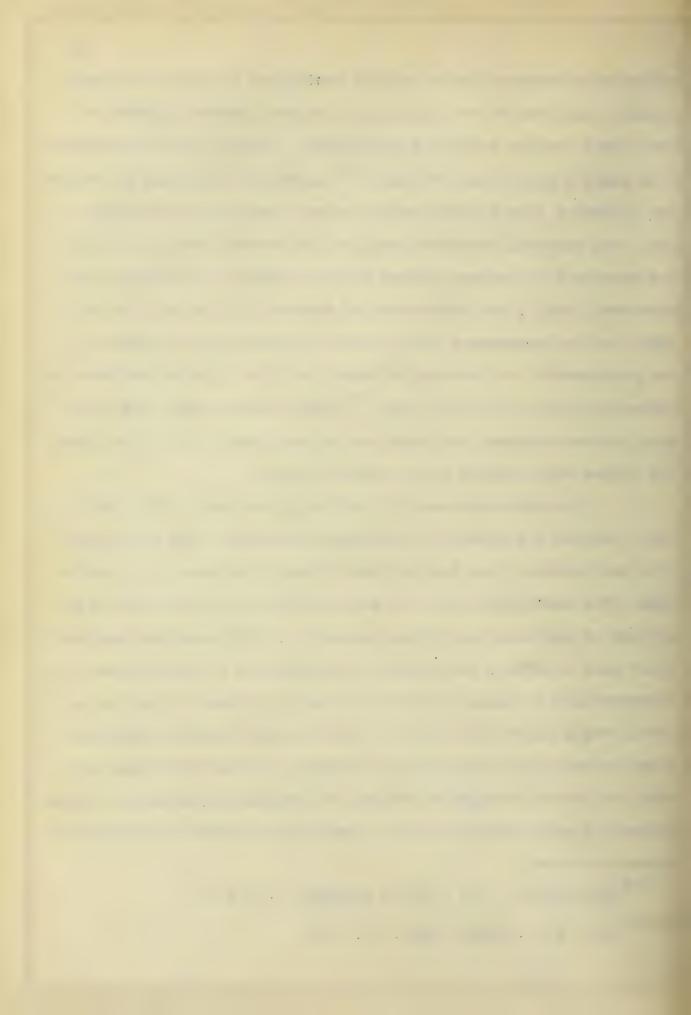


delivery of strange clerks and the punishment of all who falsely accused churchmen or who maliciously shaved arrested clerks so that their tonsure would not be evident. Finally the confiscation of a clerk's goods was forbidden. Another council met at Oxford the following year but the ground covered presents little that is new: the assembly declaimed against the non-delivery of clerks, the hanging of churchmen before the opportunity of claiming them presented itself, the destroying of tonsure by shaving, the outlawry for non-appearance, the seizure of goods after purgation, two punishments for the same offense, and the injuries suffered in connection with the forest laws. These canons again had no effect because absences and fear led to the dissolution of the council before any definite step could be taken.

The constitutions of Archbishop Boniface, published in 1261, furnish a statement of clerical grievances more authoritative and somewhat less radical than those which have been considered. The archbishop took the same position as appears above in matters of confiscation, false accusation, malicious shaving, and other real injuries, but limited the authority of the ordinary to excommunicate to cases in which the judges refused to deliver a clerk, "well known and honest." He evidently favored ecclesiastical jurisdiction over forest offenses, for though he does not make the claim directly he advises the ordinaries to punish clerks accused of such offenses with a "personal punishment in proportion

⁸⁶ Ann. Burt., 1258 (Luard, Annales, I, 413 ff).

Mat. Par., Chron. Maj., VI, 353.



to the fault, lest assurance of impunity render men presumptious and licentious in offending."88

Among the most active of the English churchmen in resisting the extortions of the pope was Robert Grosseteste, bishop of Lincoln, who also was a leader in the struggle for clerical immunity. By his direction Robert Marisco drew up a long list of the privileges that should be enjoyed by the clergy and the methods by which they should be enforced. (1) No one should lay violent hands on a clerk: whoever does so will suffer excommunication from which he can be absolved by the pope only, save in special cases. (2) No one should detain a clerk in public or private custody or prison, unless he be violent and doing injury; whoever presumes to do so will be excommunicated unless the clerk is taken in some grave offense such as theft, murder, robbery, arson, or a similar crime, and even in this case he should be detained in custody only until the arrival of an order from the prelate to whose jurisdiction he belongs. It is a corrupt custom of the realm of England that clerks suspected of grave crime may be arrested by the king's officers without special warrant; this is also true of a clerk found in the company of thieves or accused of grave crime in a court of secular justice. (3) These things aside, if a clerk who is a thief has the clerical habit and takes part in clerical exercises, or has his lodging and his meals in common with a society of clerks, he ought not to be held in prison. But even this is not conceded in the realm of England and when the church finds

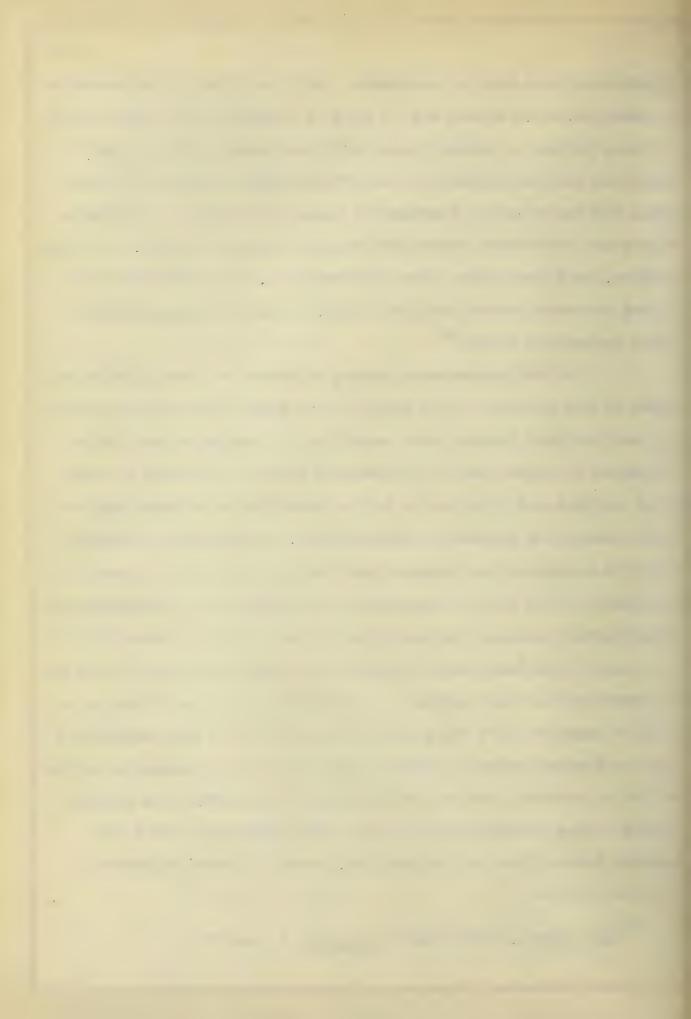
⁸⁸ Wilkins, Concilia, I, 746.

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opportunity this must be reformed. (4) If a clerk is suspected of a lesser crime he should not be held in custody by the bailiffs of the king unless by special mandate of the church; and no clerk should be held in custody for an offense not punishable by blood among the laity and by degradation among the clergy. (5) Clerks should not be brought before the secular judges by force, by pledge holding, or by any other form of oppression, or should they be forced to swear before secular judges, or make any appearance in cases concerning crime. 89

In 1253 Grosseteste made a statement of the injuries suffered by the bishops at the hands of the king, dwelling especially on the fact that bishops were compelled to constrain their subordinates to appear before the secular courts to respond in personal actions and likewise to settle amercements adjudged against their clergy for personal transgressions, a proceeding incompatible with ecclesiastical dignity and detrimental to the liberty of the church. The list of grievances was prefaced by a statement of Grosseteste's reasons for insisting on the judicial immunity of the clergy: the churchmen represent the spiritual power, which is far greater than the secular; it is impossible for an inferior to judge a superior, yet the king has gone so far in his usurpations that he forces clerks to submit themselves to the judgments of his courts in personal actions and condemns or absolves them without regard to the prohibitions of the sacred Scriptures; this is against both divine and natural law, since it seeks to convert

⁸⁹ Ann. Burt., 1258 (Luard, Annales, I, 425 ff).



"the head into the tail."90

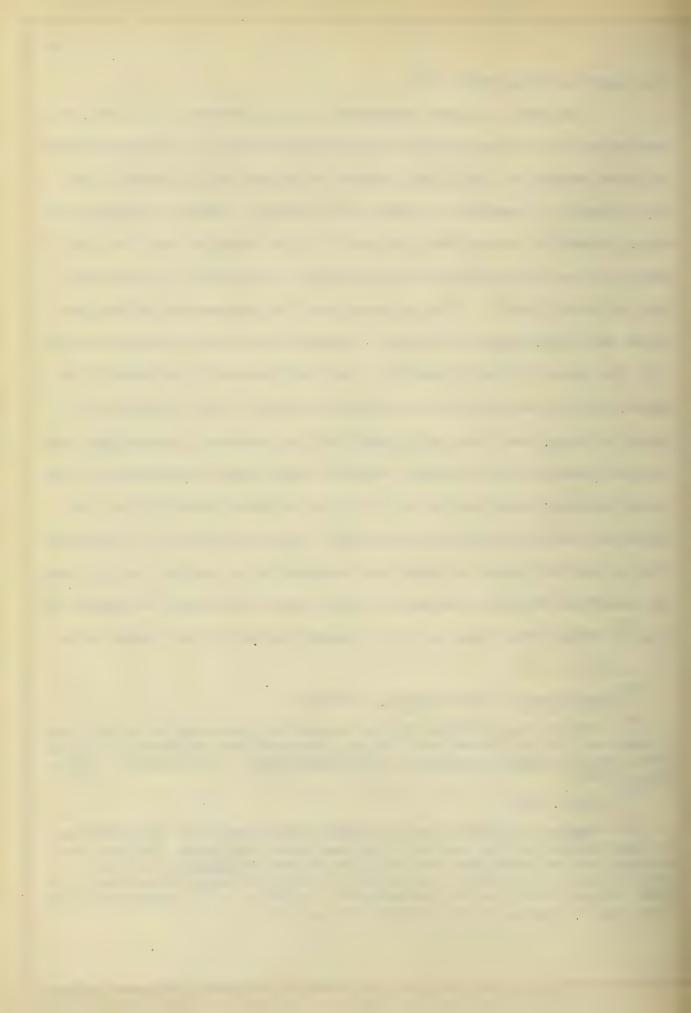
He uses the same arguments in his letters. In 1236, he complains to the archbishop of Canterbury that it is becoming more and more common to bring ecclesiastics before lay tribunals for the decision of personal cases of all sorts. Thus the superior is being forced to accept the judgment of the inferior and the prophecy of the Old Testament foretelling of the fall of the priesthood is fulfilled. 91 The priests are the successors of the Levites and the layman who passes judgment on a clerk tramples under foot the claim of God himself: "The Levites shall be mine." In truth, since the clergy is the superior power, all judgment belongs to them, and they only grant to the secular leaders the making and execution of secular laws in order that justice may be secured through their ministry. 92 It is written indelibly in the canonical sanctions that no one shall accuse a priest or clerk before a secular judge or have them brought to a secular trial: they are reserved for the judgment of God alone and cannot be judged by Since therefore to try a clerk "before a lay judge is so

⁹⁰ Ann. Burt., 1253 (ibid., 422 ff).

^{91 &}quot;Sed si cum reliquo populo sacerdos judicatur a laico, impletum est id prophetae vaticinium, praenuncians dejectum sacerdotium, et erit sicut populus, sic et sacerdos." Grosseteste, Epistolae, 216.

⁹² Ibid., 217.

[&]quot;Canonicis namque sanctionibus inviolabiliter statutum est, ut nemo unquam episcopos aut clericos apud secularem judicem accusare, vel ad seculare judicium attrahere praesumat; cum hi a nemine possint judicari qui ad Dei solius judicium reservatur. Et quid mirum si solius Dei reserventur judicio, qui in sancta Scriptura dii et angeli dicti sunt?" Ibid., 219.



clearly opposed to the Scriptures, the natural order of things, the good and honorable customs, and the canon law, and since it is disapproved by so many and such great authorities, who will doubt that the clerk sins by appearing in a secular court, or that the court sins in ordering such an appearance, or that the prelate sins in failing to resist this infringement upon ecclesiastical liberty."

But Grosseteste does not blame the secular courts alone, for prelates make use of such courts; clerks accused in personal actions submit to them; and bishops permit clerks to be dragged before lay judges or even worse compel their subordinates to obey the mandates of secular courts through fear of lay power. 95

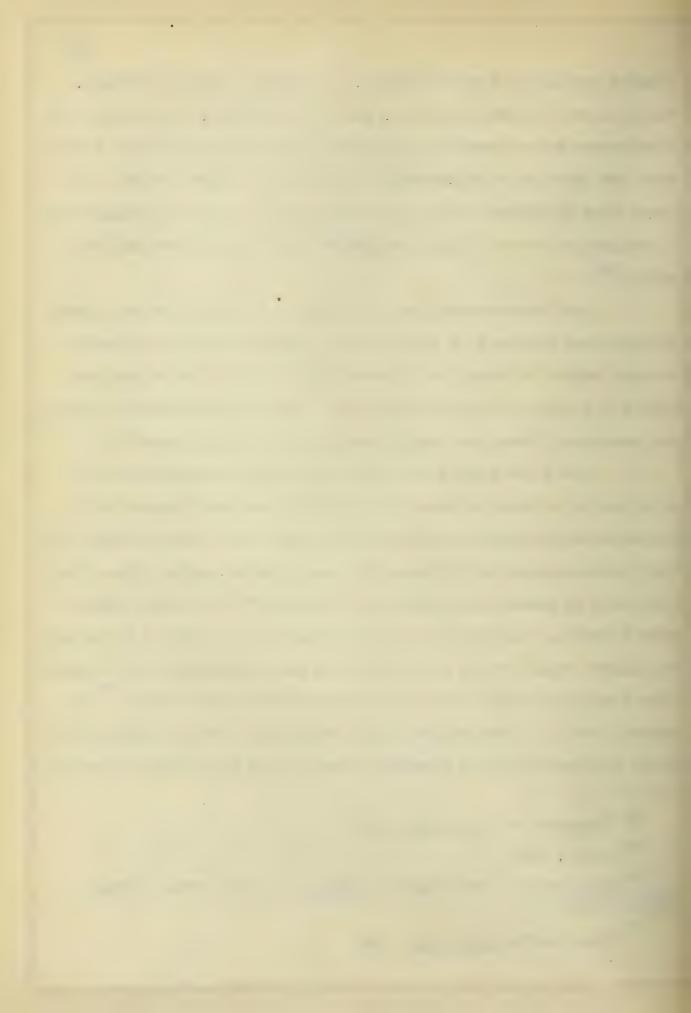
That the bishop was more than a mere advocate of the privilege of clergy is shown by the fact that when forty-five clerks were imprisoned at Oxford for looting the Jewry in that city they were released by him because none appeared against them "who were able to accuse them directly of felony." In 1236 Grosseteste took up the battle to assure benefit of clergy to crusaders. The direct cause of his activities was the imprisonment of Richard Siward who had taken the cross at the bishop's own hands. He argued that if it was unlawful for the king to seize property set aside and sanctified to clerical uses, it was also illegal for the

⁹⁴ Grosseteste, Epistolae, 219.

^{95 &}lt;u>Ibid.</u>, 111.

²⁶ Ann. Osen., 1249 (Luard, Annales, IV, 91); Thos. Wykes, Chron., ibid.

Grosseteste, Epistolae, 114.



king to lay hands on men sanctified in the great cause of rescuing the Holy Land from the infidel.

with churchmen of determination and ability holding such views as this it is little wonder that the church steadily gained ground despite the spasmodic efforts of a feeble king like Henry III, or that, by the end of his long reign benefit of clergy was better defined and better established than ever before in English history.

⁹⁸ Grosseteste, Epistolae, 115.

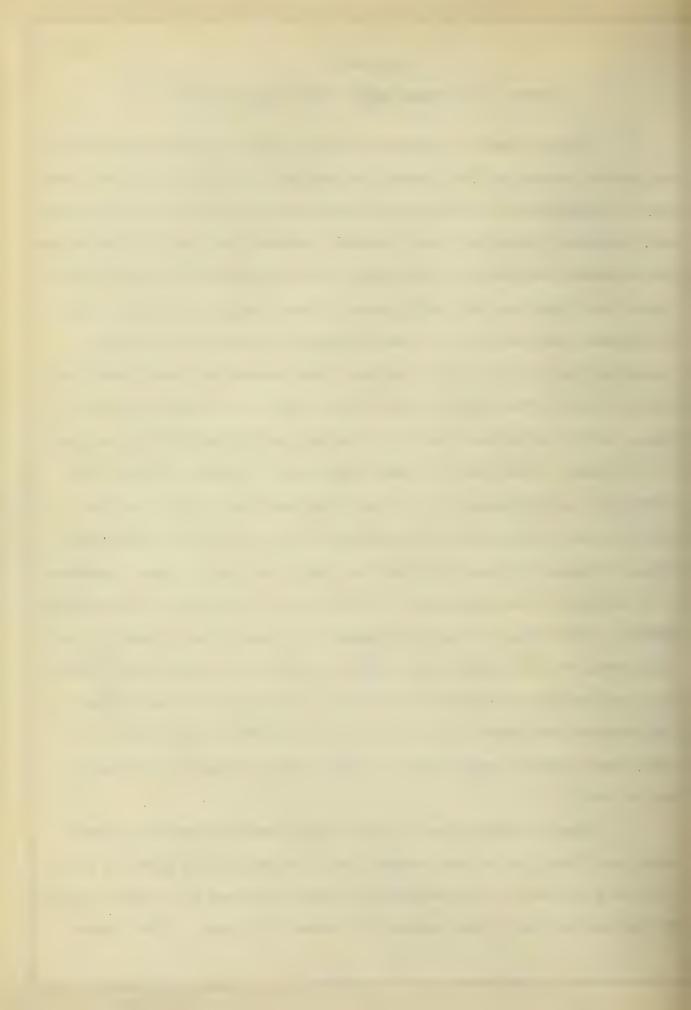


Chapter V

BENEFIT OF CLERGY UNDER THE THREE EDWARDS

When Edward I ascended to the throne in 1273 the church was at the height of its power; the weakness of Henry III had been used to advantage by the English churchmen as well as by the papacy. and, although there had been frequent clashes between the Roman and the national parties in the church, both groups had united to enforce the liberties and privileges of the clergy. Edward unlike his father was resolved to govern England in his own way: and therefore one of the first problems that presented itself was the restriction of the power of any class which, by reason of privilege, held a position that might in any way threaten the success of his plan. With this in view Edward set to work to limit the authority and influence of the nobility and the clergy, and to build up the importance of the third estate. But since the two higher classes had been growing in power for nearly three quarters of a century it was necessary for the king to proceed with caution. Edward I chose the law as his weapon of attack; and to add to the efficiency of his judges he began to collect the common law, which they and their predecessors had made, and to give it new force by legislative enactment; to this body of law from time to time he added new statutes calculated to meet the problems with which he had to deal.

In the third year of his reign Edward began the assault upon the liberties of the church; but his enactments were so harmless in appearance and contained so much that was of actual benefit to the church that there seemed no cause for alarm. The intro-

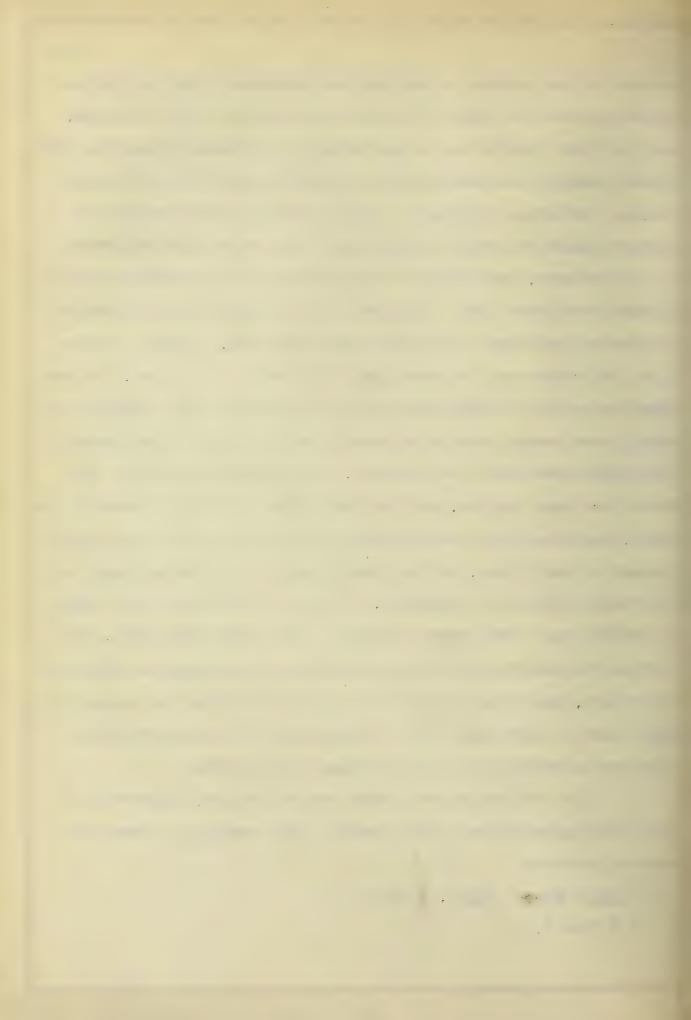


duction to the statute of Westminster announced that its purpose was to relieve the church from grievances which it had suffered. and the first chapter was a limitation of purveyance which was frequently made at the expense of the prelates and of the religious houses. Following this was a chapter devoted to the benefit of clergy: clerks who were arrested for felony were to be delivered to the ordinary, according to the privilege of the church and the customs heretofore used. This was to all appearances a guarantee of clerical privilege but it was more than that, it was a limitation: the custom was to remain as it had been in the past, the exaggerated claims of Grosseteste and other zealots for clerical immunity were passed over in silence. Then, the statute continues, "The King admonisheth the prelates, and enjoineth them upon the Faith that they owe him, and for the common Profit and Peace of the Realm, that they which be indicted of such offenses by the solemn Inquest of lawful men, in the King's Court, in no manner shall be delivered without due Purgation, so that the King shall not need to provide any other Remedy therein." The threat was plain, and whether the king would find an opportunity to provide the new remedy or not, there was a precedent recorded to which his successors might turn in case they found the leniency of ecclesiastical justice was interfering with the welfare of the realm.

The following year Edward seized another opportunity to limit the jurisdiction of the courts. The Council of Lyons had

¹ Stat. West. Prim., 3 Edw. I.

^{2 3} Edw. I. 2.

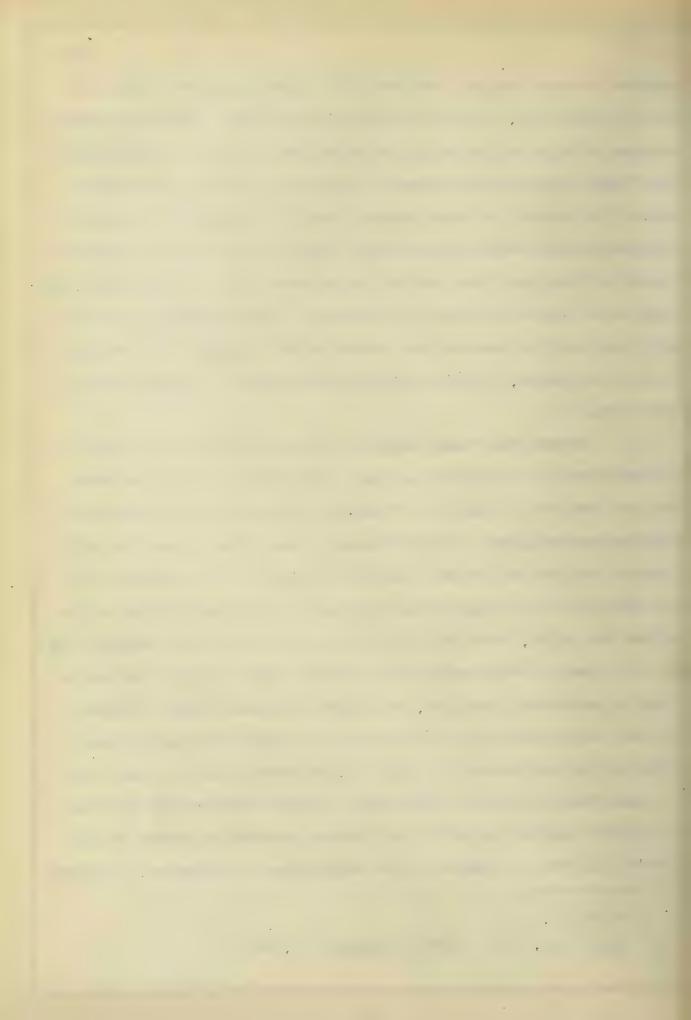


enacted a canon denying the immunity of the clergy to clerks who had twice married, or who had married one widow. The king took advantage of this and adopting the "constitution" of the "Bishop of Rome" into English law announced that since certain prelates demanded the custody of such persons when they appeared to answer a criminal charge before the secular courts, it was to be understood hereafter that they were not to be delivered to the ordinaries but were to be judged as "other lay people." The statute was made to apply not only to persons who should commit bigamy after the adoption of the canon, but also to those who had been bigami before that time.

Edward won ready support for his policy of limiting the jurisdiction of the ecclesiastical courts from his own justices, who had been for a long time vexed by the restrictions put upon them by the prelates. In 1274 arose a case which shows the attitude of the secular officers in this respect. The election of a new abbot for the monastery at Winchester had been in dispute and Andrew the prior, defeated in his attempts to gain the abbacy, had gone to Rome to seek assistance from the pope. On his return he found a new abbot installed, whereupon he hired a body of armed men and laid seige to the monastery. The whole community took sides in the matter and the mayor of Winchester sent to the king for assistance in keeping the peace. Roger Mortimer was sent as the king's justice and after an inquiry arrested a number of Andrew's followers. Meanwhile the archdeacon of Rochester, a friend

^{3 4} Edw. I. 5.

⁴ Ann. Win., 1273 (Luard, Annales, II, 99).



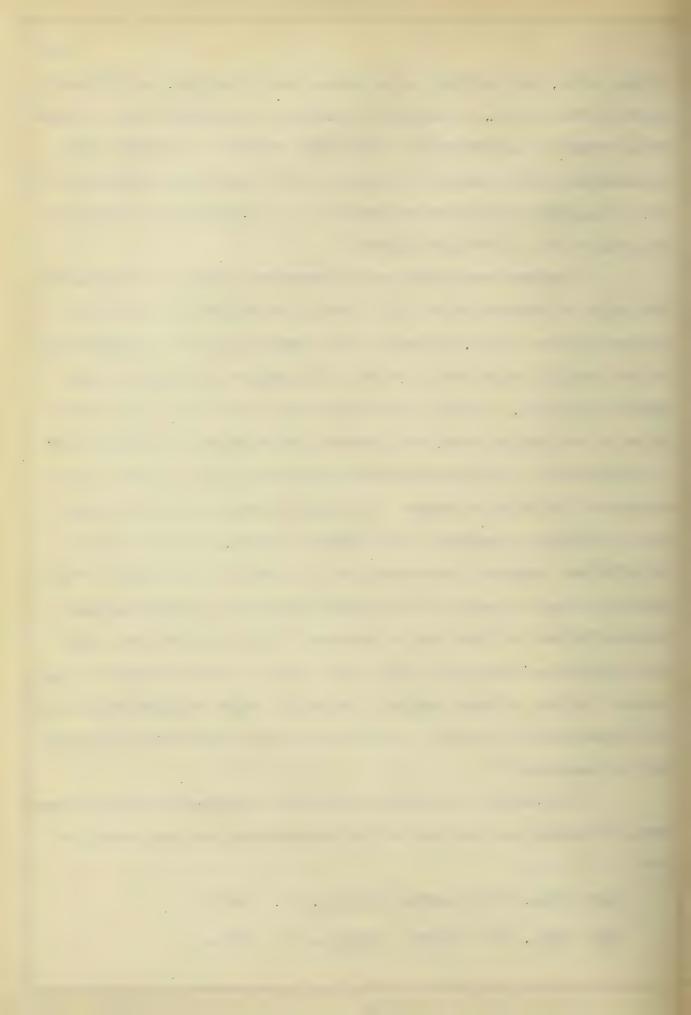
of the prior, had arrived on the scene and attempted, as representative of the church, to settle the matter in Andrew's favor. Roger would permit no interference with royal justice: he arrested the archdeacon on the charge of disturbing the peace and imprisoned him for a long time in Winchester castle. At length he was liberated but only to die a few days later. 5

Another case arose out of somewhat similar circumstances. The prior of Dunstable had for a long time enjoyed the right of holding his own court, though in the exercise of this jurisdiction he was usually associated with the justices of the king; in 1276 Roger de Seytone, a royal justice deprived the prior of his franchise in the king's name, and ordered the sheriff of Bedfordshire to exercise all the jurisdiction pertaining to the liberty in the absence of the king's judges. The prior seems to have persisted in his efforts to maintain his judicial rights, for one of his bailiffs was arrested for attempting to take an inventory of the chattels of an approver. The bailiff was shortly after released because "he was a clerk and in tonsure." The annalist adds that the liberty was restored to the prior after a time and that in punishment for his offense against the priory "Master Roger was struck with paralysis so that he lost the use of his tongue and of nearly all his members."

The prior of Dunstable figured in another affair the same year. The king was hunting in the neighborhood and had made his

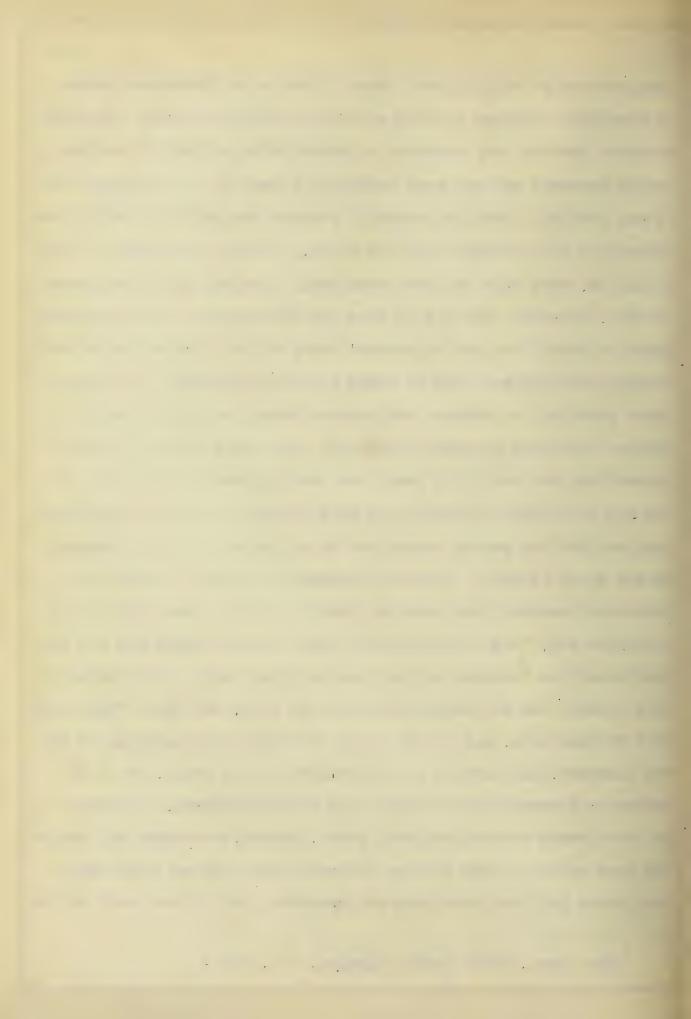
Ann. Win., 1274 (Luard, Annales, II, 116-117).

Ann. Dun., 1276 (Luard, Annales, III, 272).



headquarters at Wallingford. Some of the royal falconers lodged at Dunstable and were given quarters in the guest house. By their arrogant bearing they provoked a quarrel with certain of the monastery servants who had been assigned to care for their wants; and it was not until they had mortally wounded the chaplain and injured several of the brothers that the monks, with the assistance of the villagers, were able to drive them away. Fearing the consequences of this, the prior set out at once for Wallingford; when he arrived there he found that the falconers' story of the quarrel had already reached the king and that he could not get a hearing. The royal court moved on to Abingdon and there a formal accusation was laid against the whole monastic community. The prior wished to clear himself and his people by oath; but the king would not permit it and the prior had to depart with only the satisfaction of the royal promise that the priory should not be molested until full investigation could be made. Shortly afterward the king's justices appeared at Dunstable and made an inquiry into the case with a jury of twelve men, "who said on their oaths that the prior and all his people and the burghers of the town were innocent in this affair." This verdict was not satisfactory to the king, who later "came himself to Dunstable, and chose a jury of thirty-six legal men of the two hundreds, who were in no way related to the prior, or to the canons or servants of the priory, or to the burghers, to examine on their oaths whether the said prior, canons, servants, and burghers were guilty of the extreme violence which the said falconers complained had been done them at Dunstable; and of the death of the

⁷ Ann. Dun., 1276 (Luard, Annales, III, 273).



chaplain, how and by whom it was occasioned." "And the said jurors said to the court of the king's council that the said prior, canons, servants, and burghers were innocent of all violence, injury, or damage to the king's servants: Therefore the prior and all his were acquitted, but the prior had no other amends, unless it was that the anger of the king was mitigated."8 It was difficult to discover the sort of legal proceeding to which the prior and his monks were subjected in this instance. It is certain that they were not arrested, nor put to pledge, but it is equally certain that they were tried twice for the same offense; once before Roger de Seyton, the king's justice, and again before the king sitting in council, and that in both cases the regular method of trial by inquest was carried out. It must be concluded that the king violated the common law in this respect, and this conclusion leaves open the question whether, had the monks been found guilty in either instance, they would have been admitted to benefit of clergy.

Two instances in which benefit of clergy was allowed are recorded in the cartulary of the abbey of St. Mary's in Dublin.

The first arose in 1277 when William Unred was appealed as a murderer; a fellow monk, Patrick de Grangia de Portmirnok, and others being charged as accessories. It speaks badly for the justice of the ecclesiastical courts that of the numerous men who were accused in this case only the two monks appeared before the court. The were outlawed; the clerks were found guilty by inquisition and

⁸ Ann. Dun., 1276 (Luard, Annales, III, 274).

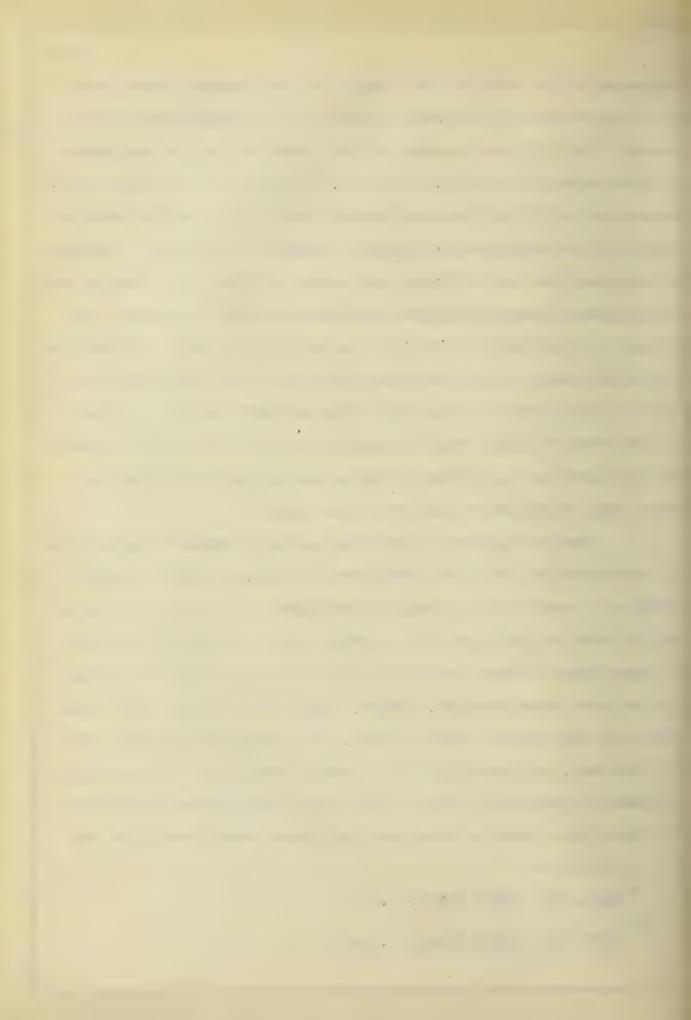


delivered to the abbot of St. Mary's who was charged "under penalty of his barony to do justice according to the statutes of his order." In 1320 another monk of the house was before the court. On this occasion one William Kedenor, "who had for two months been considered as ill and who was reputed insane" was charged with the murder of the sacristan and another brother of the house. Kedenor had escaped from the infirmary and crept into the chapel while the convent was at vespers and had there murdered his brothers. The coroner of the county of Dublin with two of the king's officers had viewed the body and had taken the murderer to the king's gaol in spite of the protest of the abbot "who claimed him for the prison of the order." Later when the justices came to Dublin the accused was delivered to the prison of his house and his order, and was there kept in chains to the end of his life. 10

One of the most interesting cases of Edward's reign arose in Northumberland in 1279. One Jacob Lelinig, a Fleming, was the agent of a Gascon wine merchant of Newcastle. On his master's behalf he went to the house of a certain John to collect the price of three tuns of wine; and on his way home he met Robert Santemareys and his three servants, Robert, Simon, and William. The servants, on the order of their master, fell upon the Fleming, beat him severely, and threw him into a small stream near the spot where the assault was made. He was found soon after and was carried to the house of a relative where he died three weeks later. He was

⁹ Cart. St. Mary's Abbey, I, 1-2.

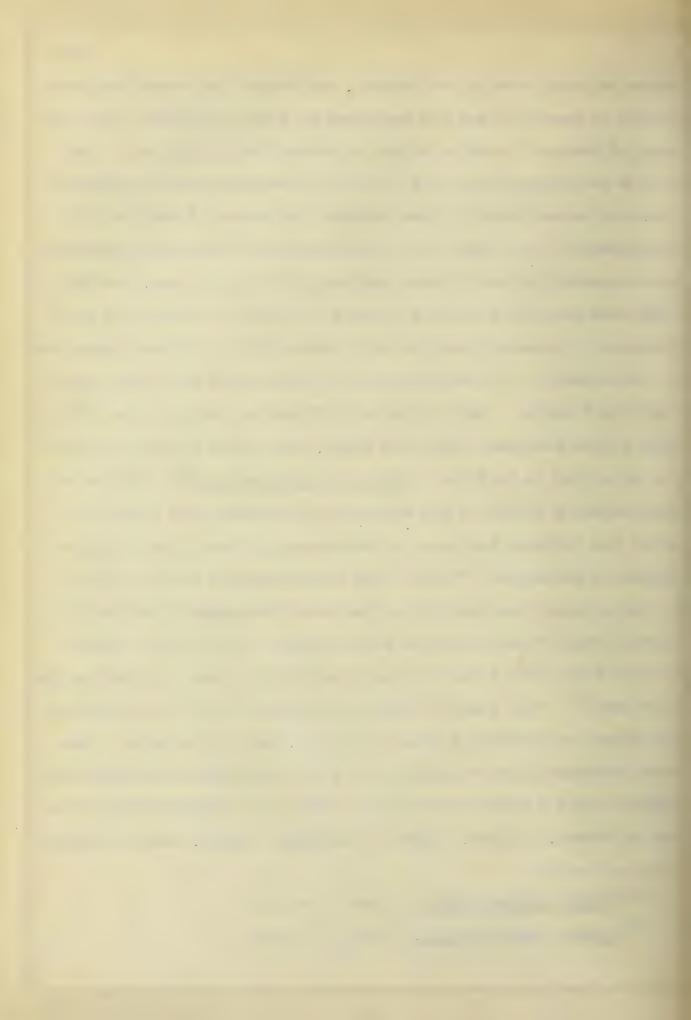
Cart. St. Mary's Abbay, I, 6-7.



buried without view by the coroner, and though the murder was committed in broad day and the perpetrators were well known, the citizens of Newcastle made no effort to arrest the guilty men. The king's justices at last held a court in Newcastle and the facts of the case became known to them through the return of the jury of presentment. As a result of its findings the coroners of Newcastle were arrested for not viewing the body of the slain man, the bailiffs were seized for failure to make the proper arrests, and then "because it appeared that the whole community of citizens consented to the murder.....the liberties of the borough were taken into the king's hands." One of the bailiffs was a clerk, but he did not appear when summoned before the court, and it was reported that he was in hiding in Norfolk. "Ideo ad judicum de eo." The men who were actually guilty of the murder did not appear for trial but after the justices had gone to Santemareys. Robert, and Simon returned to Newcastle. The new city administration was as friendly to the criminals as the old one had been; Santemareys was not molested, Simon though arrested was allowed to go at large without bail by the mayor, Robert de Scot: Robert alone was confined in the city gaol. Then came the time for another visit of the justices and Simon, not wishing to face the court, made his escape. Moreover Santemareys not wishing to have his remaining servant pay the penalty for the murder planned his escape; by his contriving, "Robert de Seghal. clerk. Thomas de Wodeslak, deacon, and Bartholemew

North. Assize Roll., 7 Edw. I, p. 367.

¹² North. Assize Roll., 7 Edw. I, p. 368.



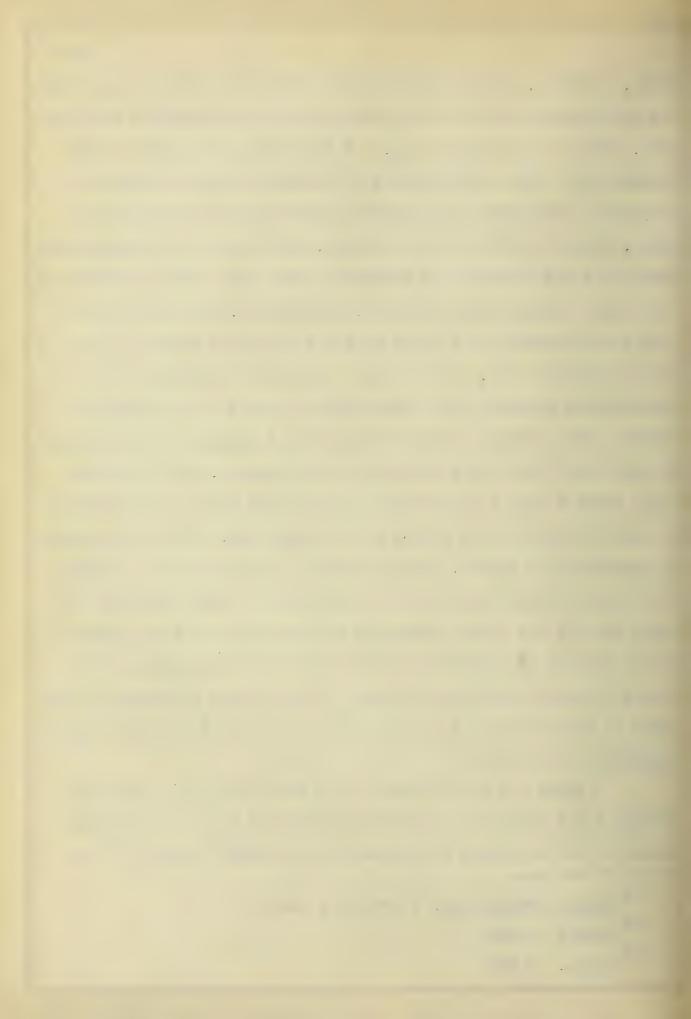
Rusel, chaplain, came by night to the prison and broke it and took the said Robert de Virly and carried him to the chapel of St. Jesmond, where they dismissed him, and from whence the said Robert withdrew and fled to the liberty of Tynemouth where he was received."13 Then came the justices; Nicholas de Scot was put in mercy. Simon and Robert were outlawed, the liberty of Tynemouth was fined, and the liberties of Newcastle again taken into the hands of the king. The principal criminal. Santemareys. was arraigned before the justices; but he said he was a clerk and refused to respond in their court, and the three principal churchmen of the neighborhood appeared and claimed him on behalf of the bishop of Durham. The justices alleged that he was a bigamus but the friendly jury found that the widow whom he had married, had been dead eight years before the enactment of the Lyons canon, and therefore he was delivered to the bishop on the condition, which was clearly in opposition to custom, that he was not to be admitted to purgation except by special consent of the king. 14 There remained the three men who had broken Newcastle gaol and who had been arrested by the sheriff of Northampton; but that officer appeared and reported that they had been delivered to the bishop of Durham by the order of the justices of the gaol delivery who had recently been in session at his castle. 15

There are other cases in the same roll which show how common it had become to invoke the benefit of clergy and how seriously it was hindering the execution of criminal justice. But

¹³ North. Assize Roll, 7 Edw. I, p. 368.

¹⁴ Ibid., p. 366.

¹⁵ Ibid., p. 368.



turned over to the ordinaries to go through the form of purgation. There were a great many acquittals and it appears that it was much easier for appellors to bring their suits than it was for them to prosecute them successfully. Johanna appealed Adam, a clerk, for the death of her sister, but Adam was acquitted. Isabella appealed two deacons for rape; she did not appear and was put in mercy; one of the deacons took to flight and was outlawed; the other was absolutely acquitted. Alice appealed four men, one of whom was a clerk, for rape; but this time it was the clerk who failed to appear and he was consequently outlawed. 18

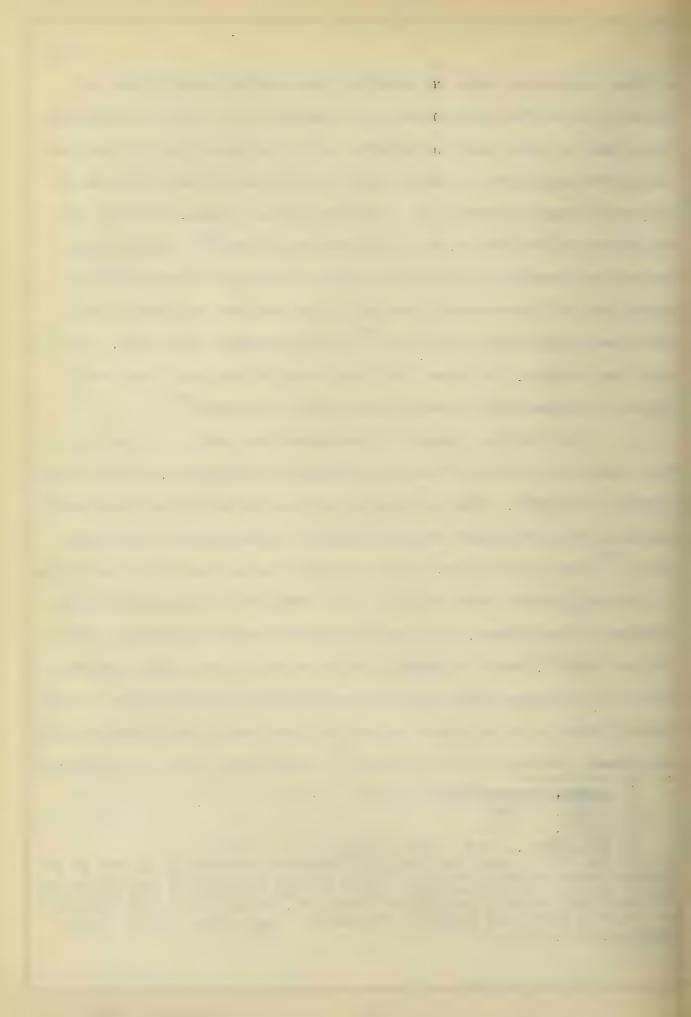
In 1284 the priory of Dunstable was again in trouble, this time at the suit of one Christiana who "appealed, in the open county of Bedford, John de Wedmore and many other of our servants and also Prior William" for the murder of her husband, John Mustard. Here again there is favor shown the accused, but this time it is royal rather than popular. The prior who is accused of receiving the murderers, and the lay brothers who are charged with the act itself, make no opposition to trial by the royal justices and in fact assume such a submissive attitude that the king orders Robert Malet to go in haste to conduct the trial and to render full and speedy justice to the accused. Christiana fails to prosecute

¹⁶ North, Assize Roll, 7 Edw. I. 365.

^{17 &}lt;u>Ibid.</u>, p. 346. 18 <u>Ibid.</u>, p. 316.

Ann. Dun., 1284 (Luard, Annales, III, 306).

[&]quot;Ac iidem appellati nulla quaerentes subterfugia, sed se secundum legem et consuetudinem regni nostri justiciare permittentes nobis attente supplicaverint, quod nos appellum illud cum celeritate qua fieri poterit audiri et terminari, ac partibus inde plenam et celerem justitiam exhiberi faciamus." Ann. Dun., 1284 (Luard, Annales, III, 312).



her appeal and as a result her pledges are fined and she is sent to jail. An inquisition is made by three knights and fourteen others who declare the nine men directly accused of the murder innocent and that "Prior William was not guilty of said death nor of any concealment of evil doers." But the jury does not stop with this; they find "that the dead man was a felon and that the appellor was not his wife;" and the dead man's goods are therefore forfeited to the crown and an additional fine is laid upon Christiana's sureties. 22

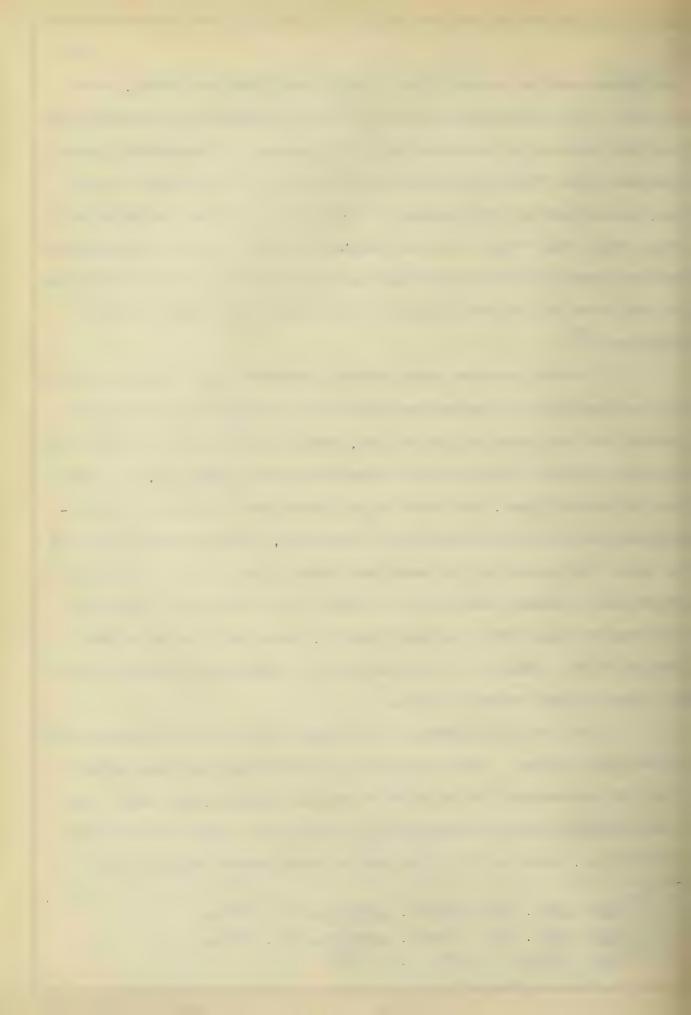
A very similar case appears somewhat later when the abbot of St. Augustine at Canterbury and four monks of his house are appealed for the death of Christiana, daughter of Thomas de Brenleye. The king informs the sheriff of Kent that the "appealed, not seeking any subterfuges, but permitting themselves to be justiced according to the law and custom of the realm, have besought the king to cause the appeal to be heard and determined with all possible speed and to cause justice to be done to the parties." Therefore "wishing to show favor to the appealed, especially as he understands there is malice in the appeal" he orders the sheriff to admit them to bail without delay. 23

In 1286 King Edward left England and did not return until three years later. Almost as soon as his strong hand was taken from the government the affairs of England began to go awry. Nobles quarreled among themselves, the Welsh and Scotch threatened trouble and, worst of all, the men in whom Edward reposed his

Ann. Dun., 1284 (Luard, Annales, III, 307).

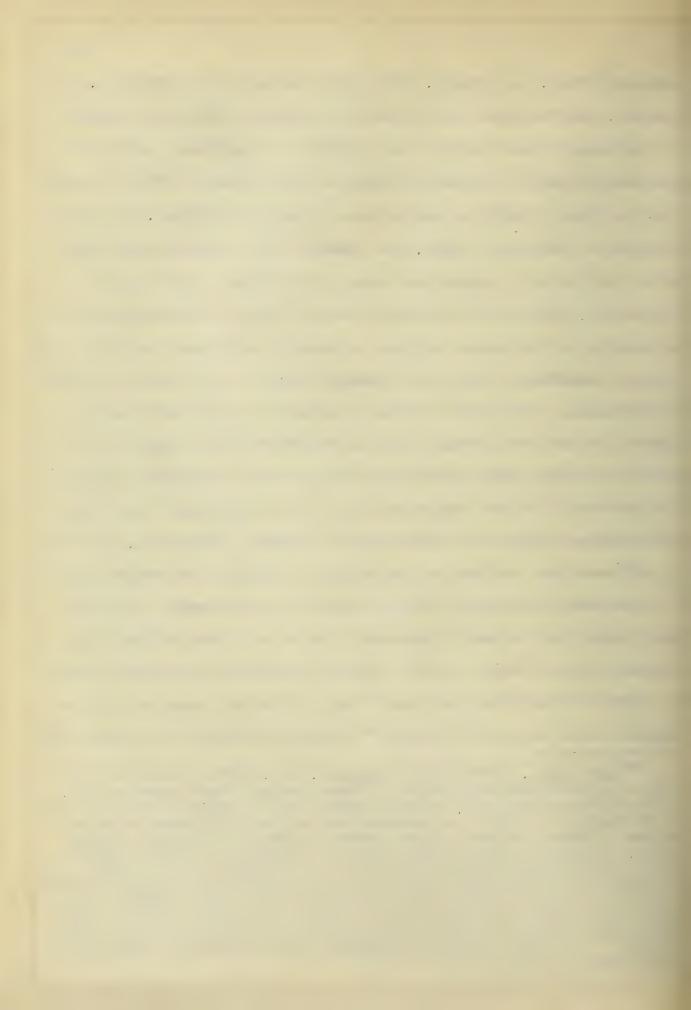
²² Ann. Dun., 1284 (Luard, Annales, III, 308).

²³ Rot. Claus., 30 Edw. I, p. 521.



greatest trust, his judges, were openly accused of corruption, extortion, and violence. The constant complaints that were carried to the king at last decided him to return to England. Almost immediately upon his arrival he began an investigation of the charges that had been brought to his notice. Thomas de Weyland, the chief justice of the King's Bench, was a knight and a married man; but while his judicial career was being investigated "by a jury of twelve men, who said on oath that he had caused certain murders to be done by his retainers and had afterwards sheltered the murderers" "Thomas remembered that in his younger days he had taken the orders of subdeacon. With this in mind he escaped the officers sent to arrest him and took refuge with the Friars Minor at Bury St. Edmunds. "and was there admitted to their habit." The king summoned the provincial of the Franciscans and won an admission that this had happened without his knowledge or consent. This done, the royal officers were ordered to lay seige to Weyland's sanctuary, and the newly-made monk was finally starved into surrender. When he gave himself up he was at once stripped of his clerical habit and thrown into the Tower. After a short time he was given his choice of three alternatives: to stand trial, to suffer perpetual imprisonment, or to abjure the realm. 24 Finding that the king would not

²⁴ Ann. Dun., 1289 (Luard, Annales, III, 355). A medieval satirist portrays Weyland's case in these words: "Unus autem ex eis, quidam Didimus non erat cum eis quando venit dominus, set mare vidit et fugit, et finxit se longius ire, et reliquit domum suam et uxorem, filios, fratres, agros, oves et boves et universa pecora campi, et fugit in fontem Babilonis, et erat ibi in vestimentis ovium propter metum judiciorum; et omnis sapientia eius devorata est, et factus est timor super omnes vicinos eius et super omnia montana Anglie divulgabantur verba hec. Tunc dixit Rex suis 'Habete custodiam illius; ite, custodite sicut scitis, ne forte veniant Romani et tollant nostrum locum et gentem; et erit novissimus error peior priore.' Illi autem abierunt signantes Babiloniam cum custodibus." State Trials of Edw. I, 95.



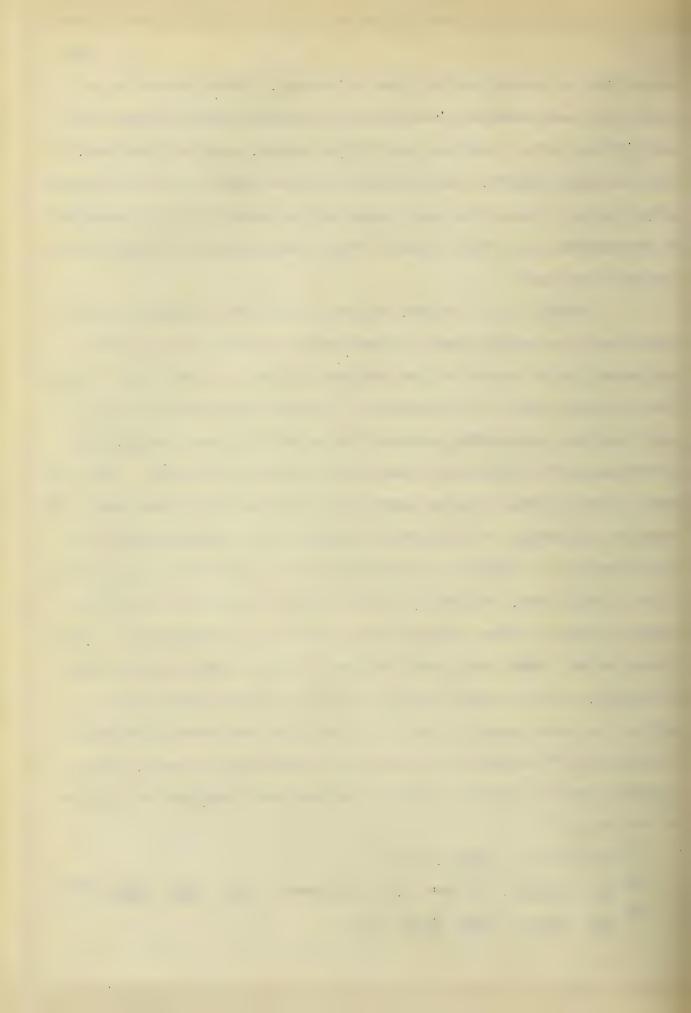
permit him to depend on the plea of clergy, Thomas chose to go into exile and embarked from Dover for France where he spent the rest of his life. Another one of the judges, Adam de Stratton, 25 also in minor orders, was imprisoned in the Tower but was released after paying a huge fine and promising to restore to the monastery of Bermondsey the several manors which the monks had "indiscreetly demised" to him. 26

About this time the English clergy were aroused by the execution of a certain man who had been convicted of theft and sentenced to be hanged by the justices sitting in the town of Guilford in the diocese of Winchester. The man was reputed to be a clerk and had repeatedly claimed the benefit of the clergy, but nevertheless the sentence against him had been executed. When the news of this affair reached Archbishop Peckham he at once sent letters to the bishop of Chichester relating the circumstances and directing him to search his register for the record of the ordination of the clerk. who was at this time described as "a certain clerk of your diocese formerly son of Walter of Hereford."27 bishop acted immediately and returned that the dead man was John de Knelle, who had been ordained acolyte by the bishop of St. Asaph. He also found it recorded that John had been arrested in the diocese of Chichester and had been confined at Lewes, where, according to the bishop's orders, he had been demanded in regular

²⁵ John.Oxen., Chron., 252.

²⁶ Rot. Claus., 18 Edw. I,p. 521; Bart. Cot., Hist. Ang., 180.

²⁷ Reg. Epist. John. Peck., 690.



form by the local dean. 28 Thereafter the clerk had been transferred to the gaol at Guilford which was in the diocese of Winchester and therefore out of the writer's jurisdiction. Concerning the proceedings there he could only add to the facts already known that, although the man had not been claimed by an ordinary, he had substantiated his claim to the privilege of the clergy by exhibiting his letters of ordination, and that at one time the judges had been on the point of delivering him without formal demand, but that they had been influenced to abandon this intention and to order the execution by certain persons evilly disposed toward the church. 29 The archbishop inclosed this information in a letter to the bishop of Winchester and ordered him to punish those who were guilty of this infringement upon ecclesiastical liberty; he also directed him to inquire carefully into the claim of privilege made by Knelle, to learn definitely whether he had been formally claimed by a representative of the church, and to ascertain whether his officers had been negligent in this and similar cases. 30 In another letter to the bishop of Chichester Peckham tells the results of his further investigation: the justices at Lewes had refused to deliver John to the dean, "giving as their reason that they could not do this without express royal command."31 and that

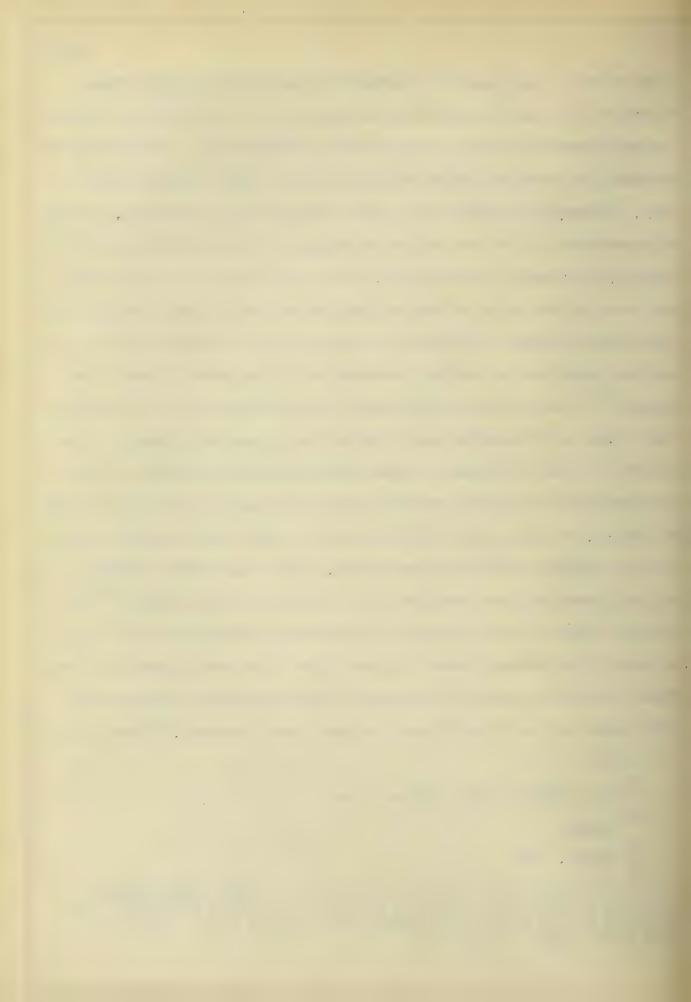
Reg. Epist. John. Peck., 699.

²⁹ Ibid.

³⁰ Ibid., 700.

[&]quot;Sed ballivi loci ipsius in quorum custodia detinebatur clericus antedictus, ipsum sic requisitum reddere noluerunt, excusantes se hoc non posse facere sine mandato regio speciali."

Reg. Epist. John. Peck., 702.



they had afterward sent him to Guilford, not only in contempt of the church but even of the laws of the king. The archbishop is therefore commanded to excommunicate the perpetrators of this outrage and all who gave them secret or public support in their course.

That the aggressions were not wholly on the side of the lay power is shown by the following case. In 1293 Adam de Walton and others were summoned to answer charges of assault and of obstructing justice. A certain Henry, vicar of Alrewasch, had been convicted of felony before the king's justices in Staffordshire. and had been delivered to the bishop of Chester as a clerk. bishop according to the custom, had assigned a day and a place for the purgation of the vicar and had proclaimed throughout the diocese that those who wished to oppose this purgation should appear and offer their objections. 32 Usually no one appeared in response to these proclamations but on this occasion several men of the vicinity came to the appointed place with the intention of making objection to the acceptance of Henry's purgation. Learning of this a number of his friends armed themselves and when his opponents appeared drove them away with violence. Henry was purged in due form and without objection; but when the news of this affair reached the king he ordered that an inquisition be made, and appointed a justice to conduct the inquiry. 33 The jurors returned that of the numerous men accused only John Balle, a chaplain, was

³² Rot. Parl., I, 100.

³³ Rot. Pat., 21 Edw. I, p. 48.

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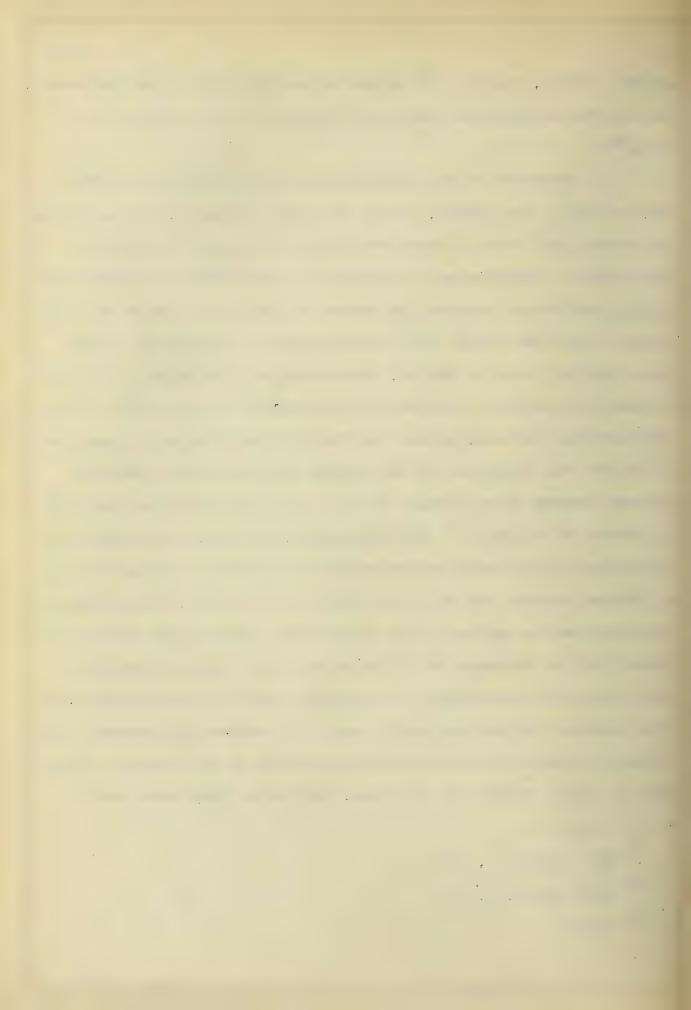
guilty. Balle, who did not appear before the court with the others, was ordered arrested and confined in prison at the will of the king. 34

The abbot of Westminster became involved in a somewhat similar case. Two clerks, Walter and John de Thorny, were appealed for murder by a certain woman who failed to appear to prosecute the appeal. Therefore as to the case of the woman the clerks were quieti: but there remained the breach of the king's peace and concerning this the clerks were found guilty by inquisition. They were then delivered to Walter, archdeacon of Huntington, who claimed them on behalf of the abbot of Westminster. At the time of the delivery the justices. Gilbert de Thornton and his associates, set a date for the purgation of the clerks and appointed a certain Richard Bostard to be present at that time to oppose the purgation on behalf of the king. 35 The archdeacon, however, in contempt of the orders of the court set an earlier date for the purgation and, as Richard Bostard had no notice and did not appear, the murderer was permitted to go free. The judges then summoned the abbot to answer for the contempt of his archdeacon and when he defaulted they laid a distraint upon his temporalities. 36 The abbot who had been summoned before the king's council to answer for contempt confessed the facts but added in avoidance that he had obeyed one summons to appear before the justices, who had at that time set a

³⁴ Rot. Parl., I. 100.

³⁵ Rot. Parl., I, 41.

³⁶ Ibid.

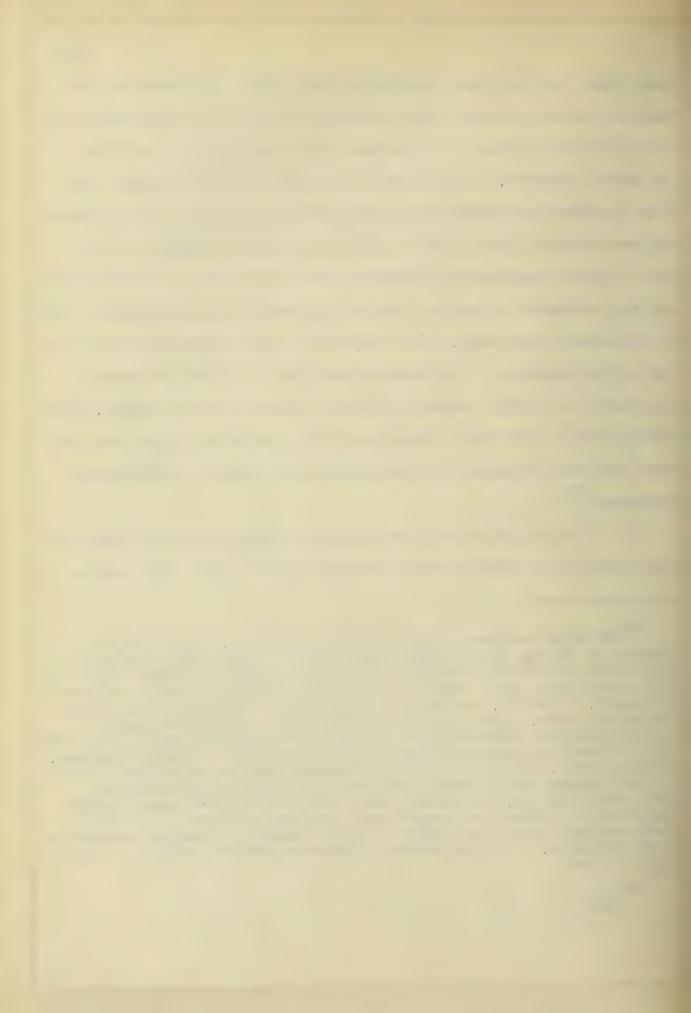


later date for the final hearing of the action on distraint, and that on the day set for trial he had been unable to appear because by royal order he was in attendance upon the king at that time. The abbot, however, did not rest his defense on mere excuse, but on a far stronger ground: there had been no contempt; his archdeacon was entirely justified in fixing the date of purgation as he did; if there had been any error it was on the part of the justices who had presumed to appoint the day of purgation and appoint a man to represent them there, for in so doing they had violated the custom of the kingdom. On hearing the bishop's plea the council suspended the letters against him and ordered that his lands, which had been in the king's hands, should be returned to him and further that the proceedings against the two clerks be indefinitely postponed.

The attitude which the secular officials were taking toward benefit of clergy appears clearly in the cases cited above.

[&]quot;Et quia predicti Justiciarii recordantur, quod predicti Clerici ad sectam Domini Regis per Inquisitionem patrie ex officio suo captam coram eis de Felonia predicta convicti fuerunt, & predicto Archidiac' Loci Ordinar' & eos ut Clericos petenti, sub pena qua decet, liberati, nec est juri consonum, vel hactenus in regno nostro usitatum, quod Dominus Rex vel alius, quicunque fuerit, versus Clericos quoscunque de cuacunque Felonia rectatos, & in Cur' Reg' ad sectam suam per Inquis' patrie ex officio Justic' captam, vel alio modo, convictos, iterato sectam suam de eodem facto heat in Cur' ipsius Domini Regis, vel etiam in Curia Ecclesiastica qualitercunque, Archidiaconus predictus certum diem coram eisdem Justiciariis statuit de purgatione predicta admittend' & eundem diem prefixit predicto Ricardo, minus discrete, & contra consuetudinem usitatam, et etiam contra libertatem Ecclesiasticam." Rot. Parl., I, 42.

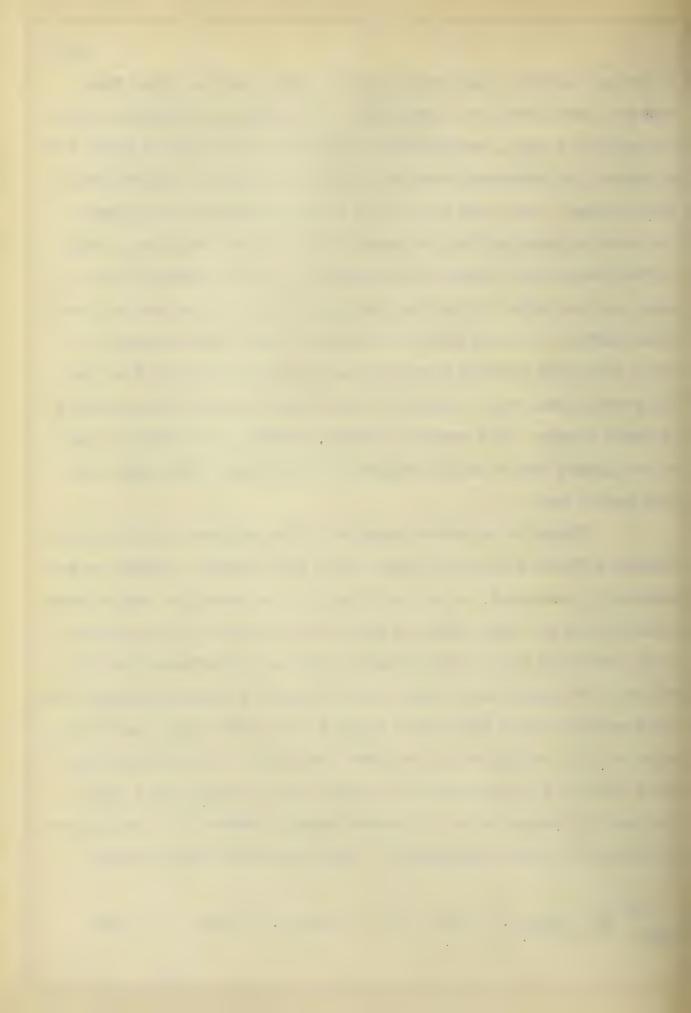
³⁸ Ibid.



As far as possible they were keeping within the law; they took whatever advantages were presented by the canon law itself, as in the case of bigami, bearing arms, and the like; they did their best to secure the voluntary submission of the clergy to ecclesiastical jurisdiction; they made use of the technicalities of the common law such as claim by the ordinary; but at times they flew boldly in the face of the liberty of the church and the custom of the realm and subjected offending clergymen to all the rigors of temporal justice. But it must be remembered that the instances in which the above courses were adopted were comparatively few, and the general rule was to admit all criminous clerks to the benefit of their clergy. The practice varied, however, with the attitude of the judges and with the character of the cases with which they they had to deal.

There is no better example of the attitude taken by the secular officials than that set by the king himself. Where he was personally concerned, as in the trial of the monks for the alleged assault upon his falconers, he took little account of ecclesiastical privilege. He offered speedy justice to churchmen who submitted to secular jurisdiction and even gave a veiled promise that the results of such submission would be satisfactory to those who made it. If the churchmen who were involved stood upon their legal rights he was disposed to respect their attitude, and there are many instances in which he sent special orders for the delivery of clerks to their ordinaries. 39 His respect for the customs

³⁹ Rot. Claus., 9 Edw. I, p. 77; ibid., 10 Edw. I, p. 155; ibid., 18 Edw. I, p. 74.



appears in several instances; he ordered his justices to drop the prosecution of a clerk who had already been found guilty of murder by inquisition, and delivered to the ordinary before whom he successfully purged himself; 40 he instructed his justices to put a stop to the practice of forcing felons to turn approver and accuse clerks: 41 and he commanded the delivery of a clerk accused of forging papal bulls. 42 On the other hand he enforced the customs when they led to the disadvantage of the clergy as well as when they were of benefit: a robber monk taken in arms "gets what he deserves."43 and the rebel prelates of Scotland were ordered to be kept in close confinement. 44 Now and then the church aroused the king's ire by attempting to block the exercise of royal authority. and after his clash with the clergy in 1296 Edward acted with especial severity in cases of this kind. In 1297 he ordered his sheriffs to arrest all who should harrass people of the church who had put themselves under royal protection, should oppose his officers in the execution of their orders, or excommunicate any person for carrying the king's commands into effect. 45 and he even went so far as to threaten Archbishop Winchelsea when the latter excommunicated the constable of Dover castle who had arrested the

⁴⁰ Rot. Claus., 34 Edw. I, p. 306.

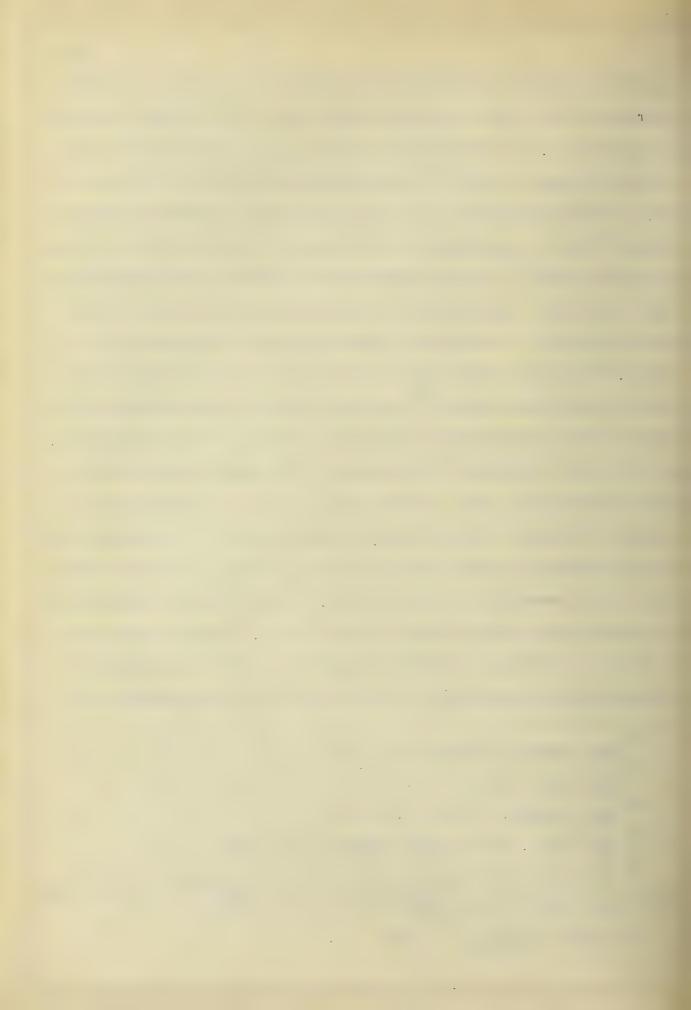
⁴¹ Reg. Pal. Dun., III, 79.

⁴² Rot. Claus., 25 Edw. I, p. 56.

⁴³ Ann. Wig., 1283 (Luard, Annales, IV, 487).

⁴⁴ The bishop of Glasgow, the bishop of St. Andrews, and the abbot of Scone are to be imprisoned in irons and are to see no one save their gaoler. Rot. Claus., 34 Edw. I, p. 410.

⁴⁵ Rymer, Foedera, II, 788.



abbot of Faversham "for trespasses committed by him to the damage of the crown."46

Edward refused to make any concession to the clergy in the matter of the forest laws: clerks were treated as other offenders, admitted to bail on good security, 47 and sometimes pardoned. 48 It must have been with the consciousness of royal support that the justices of the forest of Northamptonshire in 1287 summoned the archbishop of Canterbury. Peckham appears to have been in doubt whether to be angry or amused at this proceeding. In a letter to the justices he reminds them of the right of the bishops to take game while in progress through the royal forests and urges them not to overstep the limits of their authority; he agrees to appear at the time fixed by the summons, but (and here the amusement disappears from his tone) advises them to consider meanwhile the step they are taking. 49 This can hardly be considered a claim of inherent privilege, but Peckham was correct in his position, for some time later Edward, in renewing the Charter of the Forests. ordained that it should be lawful for prelates passing through his forest on business to "take and kill one or two of our deer."50

Despite the stand of the king for strict enforcement of the law, there are numerous instances in which he extended the royal favor to the church in the matter of clerical immunity. In

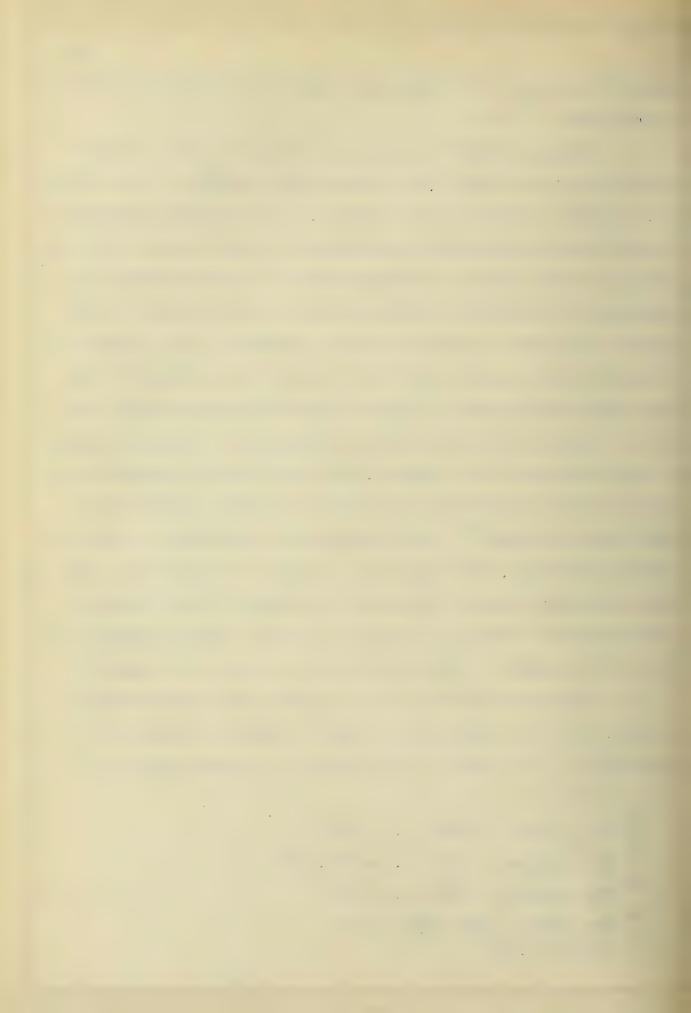
⁴⁶ Rot. Claus., 30 Edw. I, p. 582.

⁴⁷ Rot. Claus., 11 Edw. I, p. 208, 218.

⁴⁸ Rot. Claus., 22 Edw. I. p. 351.

⁴⁹ Reg. Epist. John. Peck., 942.

^{50 25} Edw. I. 11.



1275, following the example of his father, he ordered the sheriff of Kent to act as custodian for the criminous clerks who had been delivered to the bishop of Rochester; ⁵¹ and in the same year he appointed a justice to deliver Newgate of a clerk imprisoned for certain trespasses "and to surrender him to the commissary of the bishop of Lincoln according to the privilege of the clergy, so that ecclesiastical proceedings may be taken in accordance with the sanctions of the canons, and the customs of ecclesiastical liberty."

"who has been convicted of counterfeiting the seal of the Lord

King....shall be delivered to the bishop of Sarum who petitions
him as a clerk;" but he adds that "in the opinion of the council
purgation should not be permitted in such cases." Edward again
extended royal mercy when in 1305 he discovered that Archbishop
Winchelsea together with the earl of Warwick was involved in certain conspiracies that were being formed against him. He called
the primate before him and accused him of complicity in the plot.

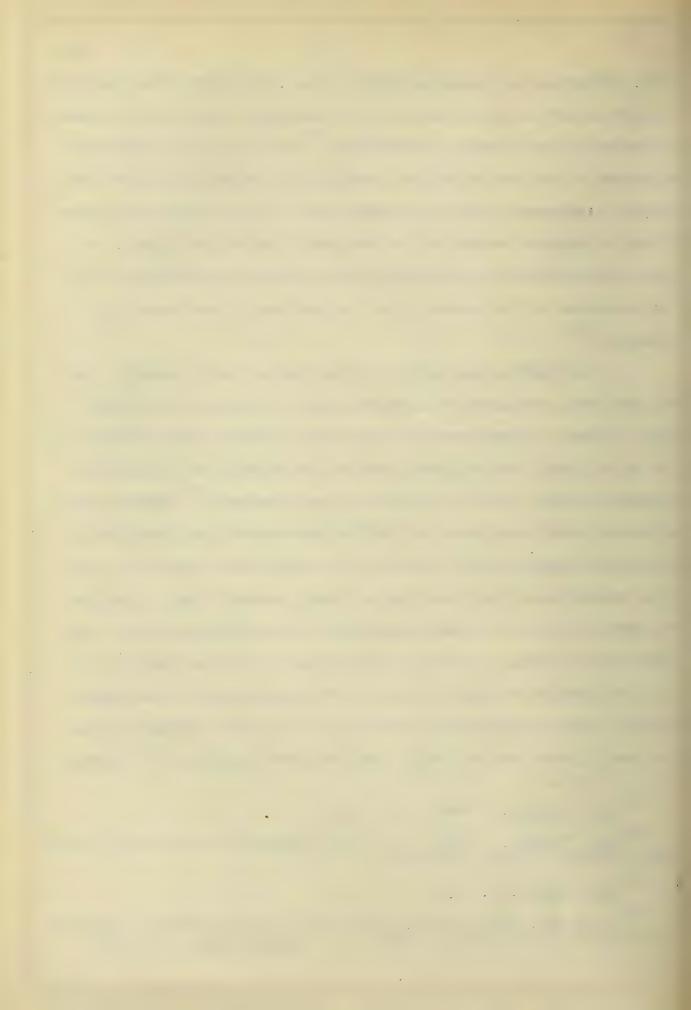
"Red with guilt the archbishop threw himself at the feet of the
king and submitted himself and all his possessions to the king's
mercy." And the king said; "not to me but to your fellow bishops
you shall yield for settlement and for just judgment." 54 Whether

⁵¹ Rot. Claus., 3 Edw. I, p. 180.

Rot. Claus., 3 Edw. I, p. 218. Offenders were seldom allowed their clergy in such instances.

⁵³ Rot. Parl., I, 40.

^{54 &}quot;Cui rex, 'Non per me, sed pares tuos coepiscopos, de facto tuo aequitas decernatur et judicium.'" Flores Hist., III, 126.

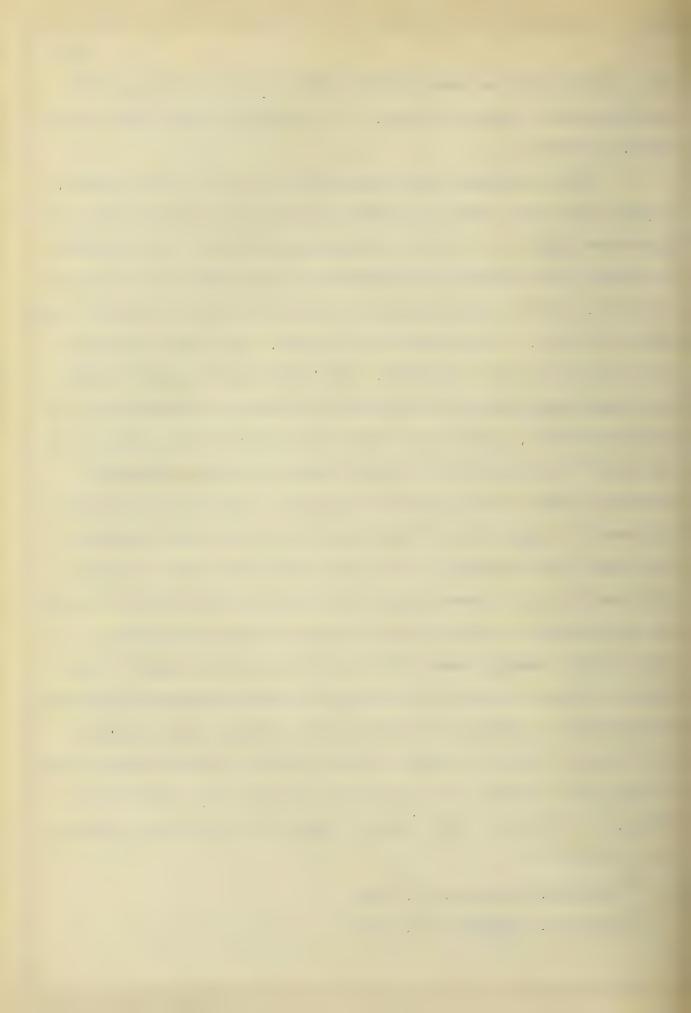


this position was the result of the respect which the king felt for Winchelsea's station or not, it is hardly one that would be expected of Edward I.

The churchmen strove mightily to maintain their rights. In 1285 the clergy drew up a series of complaints against the king which were presented to him by Archbishop Peckham. As to benefit of clergy, their demands were moderate: they asked that the goods of clerks, who had been delivered to the church and had purged themselves of guilt, be returned to the owners, also that ordinaries should have the power to arrest, hold, and proceed against clerks who forged papal bulls or their seals and against laymen guilty of the same offense, until they should be demanded by the officers of the king. 55 To the first of these demands the king returned a favorable answer: to the second he replied: "The ordinaries have the power to arrest them." This answer was not to the liking of the clergy who protested: "It is not sufficient that prelates be permitted to arrest clerks unless they are also permitted to arrest and hold laymen, at least until the coming of the bailiffs or others having secular powers."56 The king made no reply to this, and for a time at least this attempt to extend ecclesiastical power was abandoned. Archbishop Peckham stood strongly for clerical privilege and in one instance went so far as to demand the delivery of one of his tenants, who was in the custody of the sheriff of Sussex, on the ground that "men or tenents of this church captured,

Wilkins, Concilia, II, 116.

⁵⁶ Wilkins, Concilia, II, 117.



imprisoned, or detained in any part of England ought to be delivered to our custody." since the liberties of Canterbury were spiritual rather than temporal. 57 On another occasion he wrote to the mayor of Sandwich threatening the censures of the church unless the arrest and mistreatment of clerks ceased in that city. 58 Sometimes he found it necessary to censure his own people for their misconduct in judicial matters: at one time he reproves the prior of Christ Church for beginning personal action in a lay court against a fellow churchman. 59 and again admonishes the bishop of London to secure the release of two foreign clerks whom the bishop. angered because they took a case out of his court by appeal, had delivered to the secular arm. Nor did the archbishop hesitate to exercise authority against the great men of the kingdom: in 1282 he ordered the excommunication of Roger Mortimer who had imprisoned a clerk by whom he had been reproved for his adulterous habits 61 and two years later he demanded from the king himself, though in courteous words, the custody of certain clerks accused of apostacy and heresy, reminding Edward that while he had certain authority in secular matters, an affair of this kind was wholly beyond his jurisdiction. 62 He was especially active in securing the release of Amauri de Montfort who had been held in prison in Corfe castle

⁵⁷ Reg. Epist. John. Peck., 11.

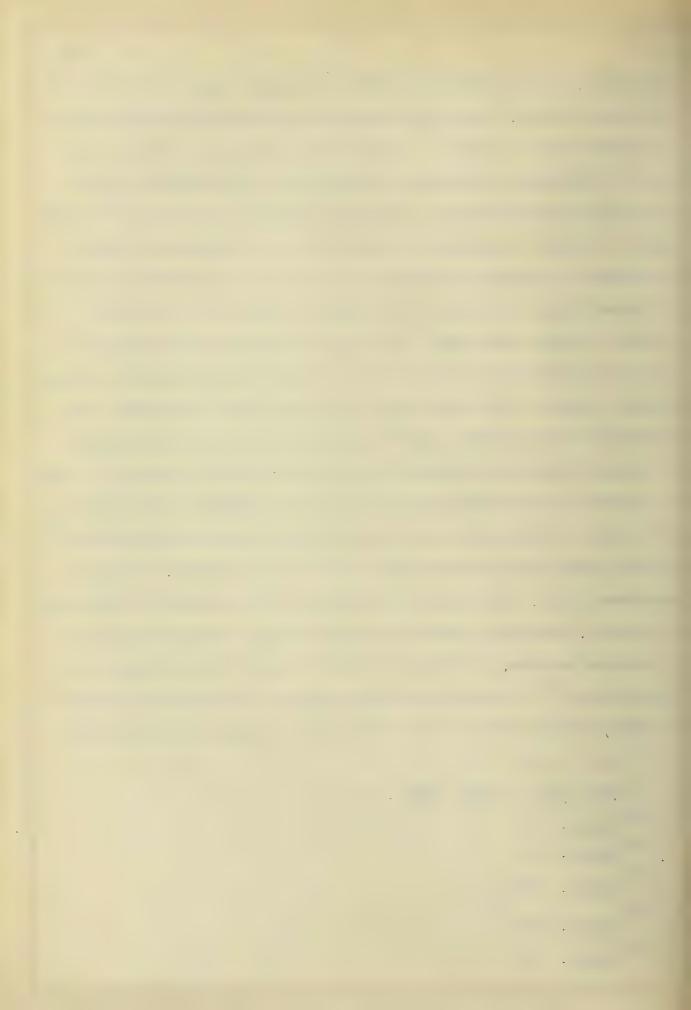
⁵⁸ Ibid., 42.

⁵⁹ Ibid., 15.

⁶⁰ Ibid., 530.

⁶¹ Ibid., 497.

⁶² Ibid., 705.



for a long time. 63 In 1276 an order was issued for the young man's delivery to the archbishop, 64 but it was not until four years later that he was allowed to go completely free.

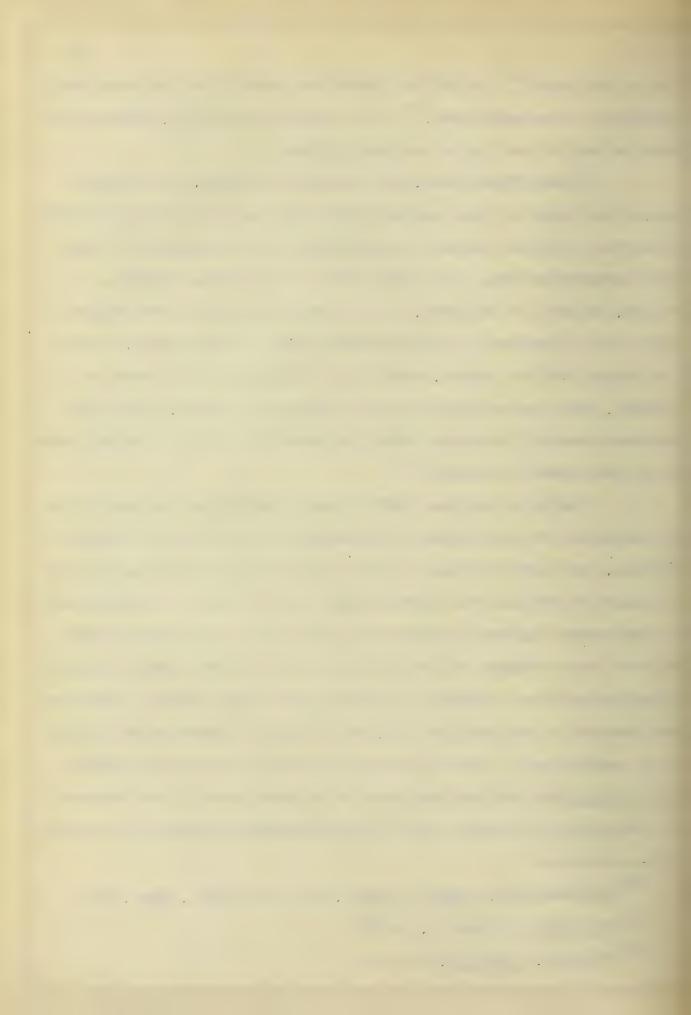
Robert Winchelsea, who succeeded Pekcham, was equally active in behalf of the clerical privilege; and in 1298 he included a chapter directed against its violators in his sentences of general excommunication. All those who took prelates, rectors, vicars, priests of churches, or any ecclesiastical person whatsoever into custody were to be excommunicated "at high mass, before the clergy and the people, with bells tolling and with candles lighted, that the solemnity be more dreaded." Moreover the four churches nearest the place where the clerk was held in custody were to be laid under interdict. 65

Early in the year 1303 Edward started upon an expedition to Scotland with the purpose of crushing the rebellion of William Wallace, and took with him all the forces that he could collect in the hope of settling the Scotch affair once for all. A large part of the guards who had protected the palace and the abbey at Westminster was withdrawn and soon after it was rumored that the royal treasury which was located in the abbey had been robbed. The news was carried to the king who appointed Ralph of Sandwich and others as a commission to "investigate the breach of the royal treasury vi et armis and the carrying away of a great part of the treasure in the manifest contempt and to the inestimable damage of the crown

Wm.Rishanger, Chron. et Ann., 87; Nic. Triv., Ann., 308.

⁶⁴ Rot. Pat., 6 Edw. I, p. 253.

⁶⁵ Wilkins, Concilia, II, 241.

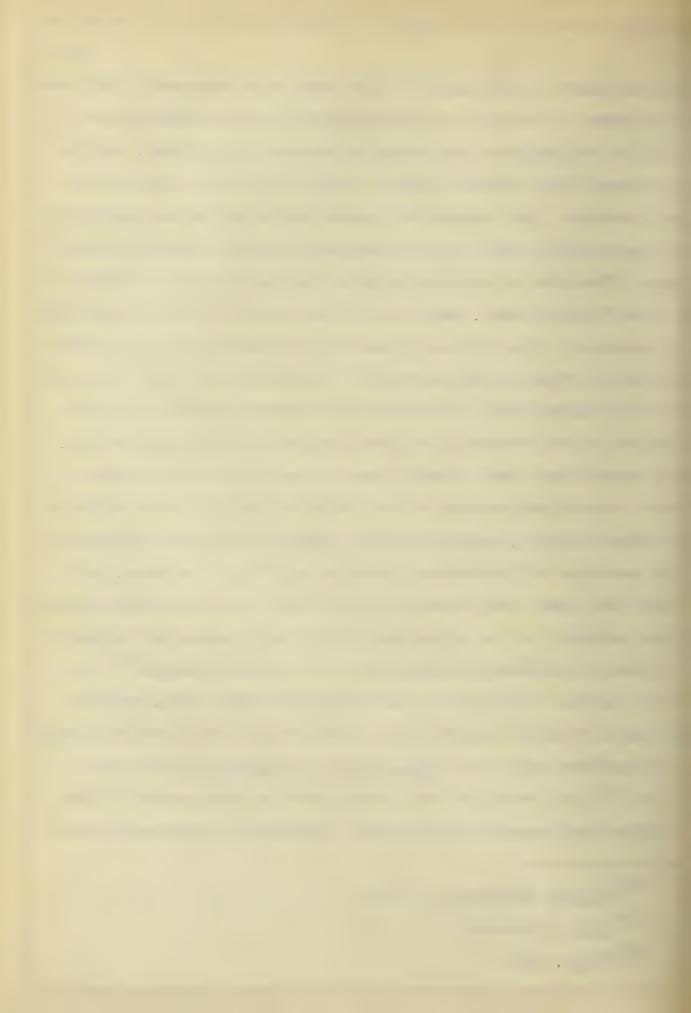


and in breach of our peace."66 The commission summoned a jury from every ward of the city of London and from every hundred of the counties of Middlesex and Surrey to discover the robbers, and the receivers of the stolen treasure, and to recover as much of it as was possible. The aldermen of London were later called upon to do the same duty. Each of the juries made separate findings in the case. There was a unanimous opinion that one Richard de Podlicote. a travelling merchant, was guilty of the matter either as principal or accessory. The evidence presented was summed up by the justices who were sitting in the Guildhall: the robbery had been the result of a deliberate plan: the robbers had burrowed through the solid masonry of the abbey wall and, awaiting the favorable opportunity. had carried away what pleased them: the men found as principals upon the combined reports of the juries of the city were Podlicote. William de Paleis, and John of St. Albans; while Adam de Warfield. the sacristan of Westminster. Adam, a servant of the abbey, and many other monks and servants of the abbey," whose names are unknown" were accessory to the crime: many others both inside and outside of the abbey were named as receivers of the stolen treasure. 67 this list the jurors of the hundreds added other names, and the aldermen of London reported that Alexander the precentor and Thomas the dean were guilty as "ordinatores et procuratores" of the crime. As a result of the investigation a large number of the officers and servants of the abbey, together with numerous laymen

⁶⁶ Antient Kalendars, I, 251.

⁶⁷ Ibid., 253-258.

⁶⁸ Ibid., 260.



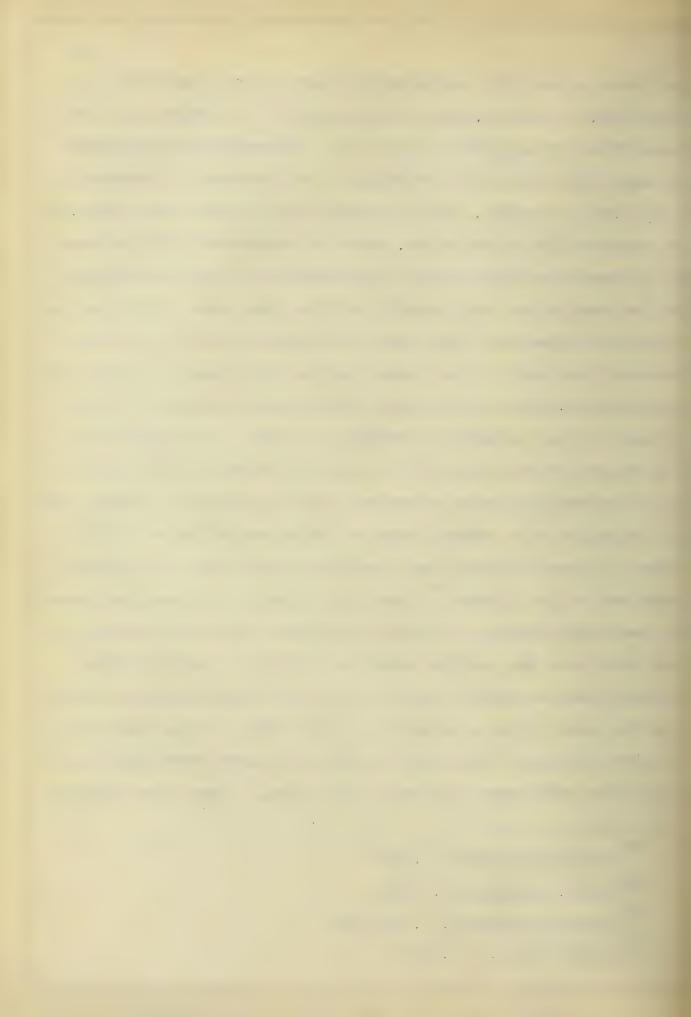
and women of doubtful character were arrested and imprisoned in the Tower, in Newgate, and at Westminster. 69 In October another commission was appointed by the king. The members were commanded to make full inquiry into "breaking of out treasury at Westminster, lately made in secret, and the seizing and carrying away of £100,000 of treasure" for which Walter, abbot of Westminster with forty-one of his monks and thirty-seven lay brothers have been incarcerated in the Tower since they "assert that they have been falsely and maliciously accused and supplicate our attention that the truth be inquired into and full and speedy justice done them." Again the juries were called and additional facts were discovered: the part of each of the leaders was carefully set down; the sacristan and the subprior were pointed out as the most active of the monks in the crime and the jurors presented that the former had offered part of the spoils to a certain woman to induce her to become his mistress. It was also said that the subprior had been seen carrying away part of the plunder. 71 Podlicote finally confessed his share in the crime though he refused to implicate any of the others; he had spent over four months tunneling through the wall into the treasury and had spent a whole day in the treasure chamber selecting the spoil which he intended to carry away. Acting upon this and the findings of the juries a number of laymen were hanged and ten of the monks were confined in the Tower, 72 where they remained

Antient Kalendars, I, 269.

⁷⁰ Rymer, Foedera, II, 938.

⁷¹ Antient Kalendars, I. 273-293.

⁷² Flores Hist., III, 116.



until 1305 when they were released by the order of the king. 73 The abbot and the other monks were released on bail and no more is heard of them. 74 The chroniclers who take notice of this affair have little to say of the facts though the majority of them, espeically Rishanger and the author of the Flores Historiarum, 76 are inclined to launch into tirades against the lay power for its injustice. The author of Annales Londonienses, however, gives some facts: Richard Podyngtone (Podlicote) was taken out of sanctuary by two bailiffs of the city of London who were forced to do heavy penance for their sacrilege, 77 and in 1305 John de Potekot was taken to Westminster and tried for his share in the crime. 78 That is all the evidence that is presented yet it is safe to say that in this matter there was no allowance of clergy and it may be doubted if any was claimed. The prisoners released in 1305 were either pardoned or let to bail, and the whole affair passed into history.

The last case of importance in the reign of Edward I concerned Walter Langton, bishop of Coventry and Litchfield, who was summoned before the pope to answer charges of crime. The bishop went to Rome but after spending a great deal of money returned to England without having cleared himself of the accusations. 79 At

⁷³ Flores Hist., III, 321.

The account in the Antient Kalendars ends with a list of the sureties of the prisoners. I, 294-299.

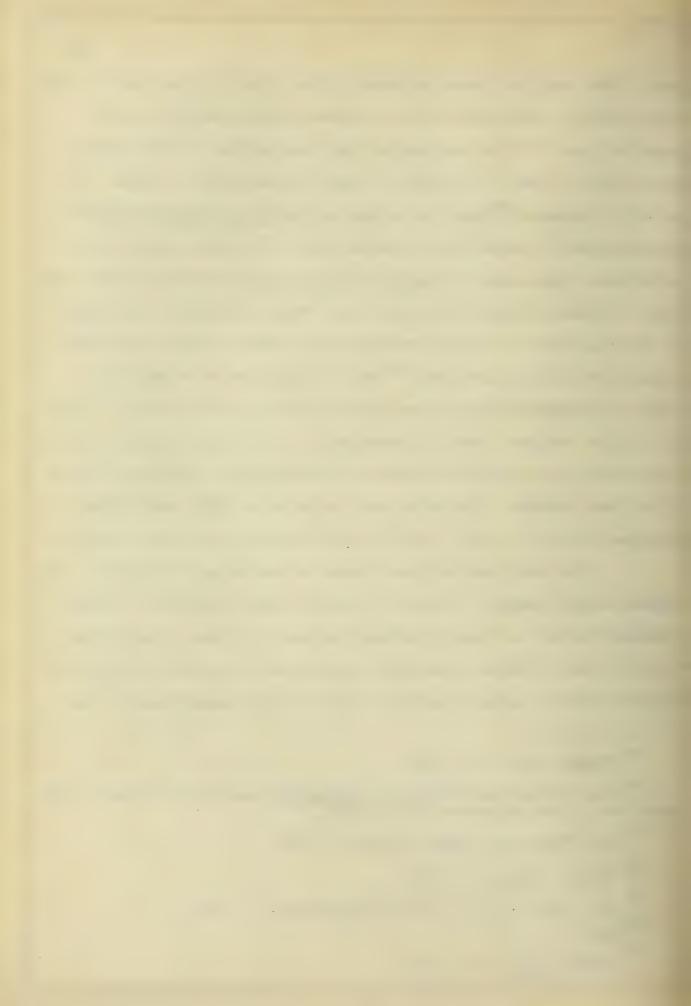
⁷⁵ Wm. Rishanger, Chron. Et Ann., 420.

⁷⁶ Flores Hist., III, 116.

Ann. Lond., 1303 (Stubbs, Chronicles, I, 130).

⁷⁸ Ibid.

⁷⁹ Flores Hist., III, 305.



last he was permitted to purge himself before the archbishop "with churchmen of great fame and laymen and citizens of high repute" and was so successful that the pope sent "letters of great favor and restored to him his position and all his property." Meanwhile one John, a knight, who had brought the charges against the bishop was himself accused of murder and other crimes. His accomplice "claimed the law of the church and said that even though a married man, he was a deacon before he was married." "He was delivered to the archbishop and died after five days in the episcopal prison."

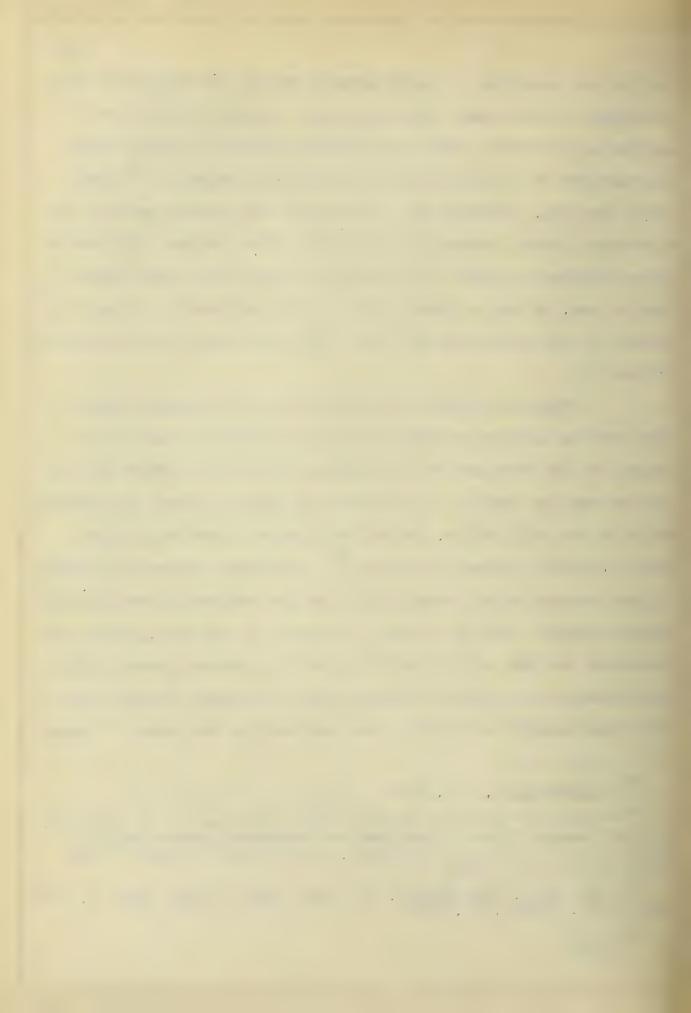
This same Bishop Walter had been the treasurer and the most trusted advisor of Edward I during the latter years of his reign. He had been active in securing the exile of Peter Gaveston and had won the enmity of the prince of Wales by openly reproaching him with his evil habits, and by refusing to allow him to draw freely upon his father's treasury. Been allow him to draw and as soon as he became king took the earliest opportunity to revenge himself upon the bishop. Faithful to the last, Walter accompanied the body of the dead king on its progress toward London. At Waltham he was seized by knights sent by Edward II and, after a brief imprisonment at Windsor, was confined in the Tower. Boger

⁸⁰ Flores Hist., III. 306.

^{81 &}quot;Conscius vero sibi vendicat jus ecclesiae; et si uxoratus, ait se diaconum fuisse prius quam eam duxisset. Tandem condempnatus carceri episcopali liberatur, quo per dies quinque nec amplius supervixit." Ibid.

⁸² Ada. Mur., Con. Chron., 14; Thom. Wals., Hist. Ang., I, 119; Walt. Hem., Chron., II, 273.

⁸³ Ibid.



Brazabon and his fellow justices were summoned to London to assist the king in the trial of the bishop "for the injuries which he had done certain men during the time when he was the treasurer of the late king" and, upon their finding, his lands and chattels were confiscated by the king, and he was remitted to the Tower. 85 The whole power of the church became interested in Walter's plight; the pope sent letters to the king reminding him of his duty to uphold ecclesiastical liberty, exhorting him to send the bishop to Rome for a canonical trial, and assuring an early and a just decision if this were done. 86 Before the papal letter reached the king, however. Langton had been liberated. 87 This was in a large measure due to the efforts of Archbishop Robert Winchelsea, who. in spite of his personal dislike, interested himself in the bishop's behalf, and refused to attend parliament until he had been released. Within a short time Langton was again arrested and this time imprisoned in the castle at York. 89 The pope wrote again to the king reminding him of the bishop's faithful services to Edward I and expressing his doubt that his guilt was as great as the king's officers would have him believe and asking, lest the honor of the king as well as that of the church be soiled, that the

Order to Roger de Brazabon to levy execution on temporalities, Rot. Claus., 1 Edw. II, p. 20; to the sheriff of Northumbria to seize goods and chattels. Rymer, Foedera, III, 11; to Countess of Norfolk to pay £275 due the bishop to debtors of the king, Ibid., 107.

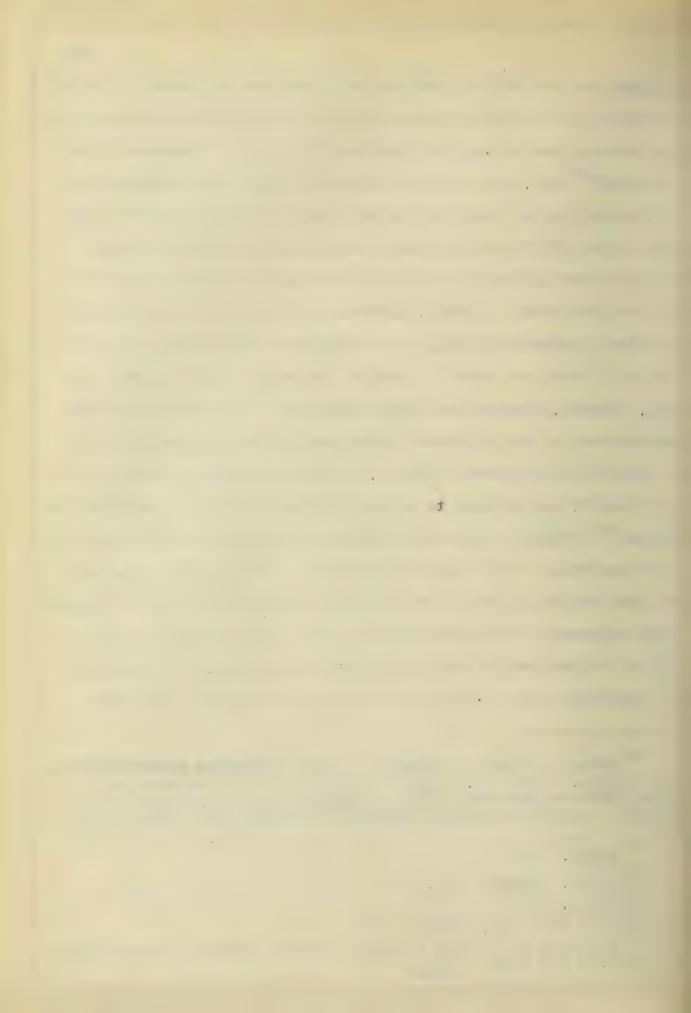
⁸⁵ Ibid., 71.

⁸⁶ Rymer, Foedera, III, 73.

⁸⁷ Ibid., 121.

⁸⁸ Ada. Mur., Con. Chron., 14.

⁸⁹ Murimuth has either confused the two arrests, or has failed to consider the first. Ibid., 11.



bishop be delivered over to ecclesiastical justice. 90 William, archbishop of York, proceeding according to the established custom, appointed the bishop of Withern his commissary to demand the custody of Langton from the king's justices and to deliver him to the episcopal prison at York. 91 These efforts were successful, and in January, 1312, a letter was sent by the king to all the knights and vassals on Bishop Walter's lands ordering them to receive and obey him and to pay to him any arrears that might be due. 92 At the same time the king sent a letter to Rome announcing that the bishop had been pardoned because he had borne grave persecution patiently and because he was able, conscientious, and discreet, and had been high in the esteem of the late king. Edward added the hope that the pope would pardon as he himself had done, any offense which Langton had committed. 93 Three months later Langton was reappointed treasurer. 94

In 1306 Robert Bruce had murdered John Comyn in the

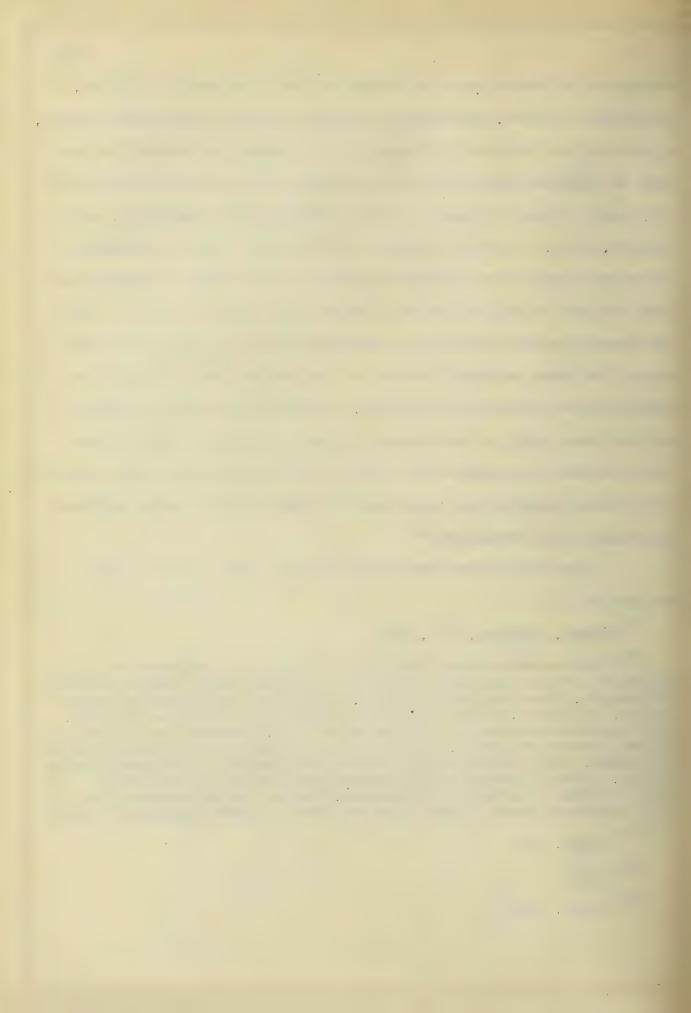
⁹⁰ Rymer, Foedera, III, 286.

^{91 &}quot;De vestra sincera Devotione & Industria Confidentes, Ad petendum coram serenissimo Principe & Domino nostro Domino Edwardo, Dei gratia, Rege Angliae illustri, ipsiusque Justiciariis quibuscumque, ad Incarceratorum Deliberationem apud Eborum assignatis, vel etiam assignandis, & ibidem sedentibus, Venerabilem in Christo Patrem Dominum Walterum, Dei gratia, Coventriensem & Lichfeldensem Episcopum, apud Eborum Regio Carceri mancipatum, Et ad recipiendum eundem, juxta libertatem & Consuetudinem Ecclesiae Anglicanae, nostrae Carcerali Custodiae liberandum, Vobis, cum potestate Coercionis Canonicae, committimus Vices nostras." Rymer, Foedera, III, 270.

⁹² Ibid., 299.

⁹³ Ibid.

⁹⁴ Ibid., 310.



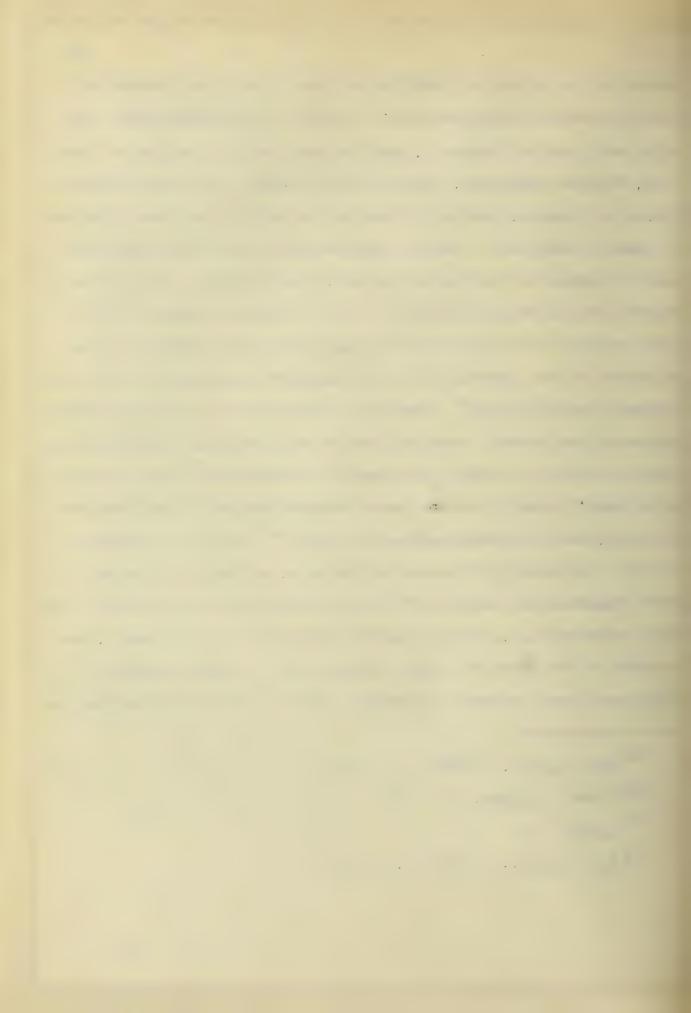
church of the priory of Dumfries and had raised the standard of rebellion against English rule. He had been excommunicated for this sacrilege by Clement V. and the two leading prelates of Scotland. William Lamberton, bishop of St. Andrews, and Robert Wishart, bishop of Glasgow, who had joined in the revolt, had been deprived of their bishoprics. The two churchmen had both fallen into the hands of Aymer de Valence at the battle of Methven, and had been thrown into an English prison. 95 In a letter to Edward II the pope explained that the late king had promised to deliver these prisoners to the Apostolic See for judgment and asked that this engagement be fulfilled. 96 When the letter arrived in England Bishop Lamberton had already been released on bail with the understanding that he was not to leave the county of Northampton 97 and that he would exert himself to make peace between the men of Scotland and the king, whom he recognized as his lord. 98 The king promised to deliver the bishop of Glasgow to the pope, although his crimes were "numerous and horrible:" he had broken faith with Edward I on many occasions and, "not a peaceful priest but a belligerent, not mounted on the altar but upon a horse, with sword instead of stole and lance instead of pastoral staff." he had rebelled against

⁹⁵ Rot. Claus., 34 Edw. I, p. 410.

⁹⁶ Rymer, Foedera, III, 73.

⁹⁷ Ibid., 82.

⁹⁸ Rot. Claus,, 2 Edw. II, p. 123.

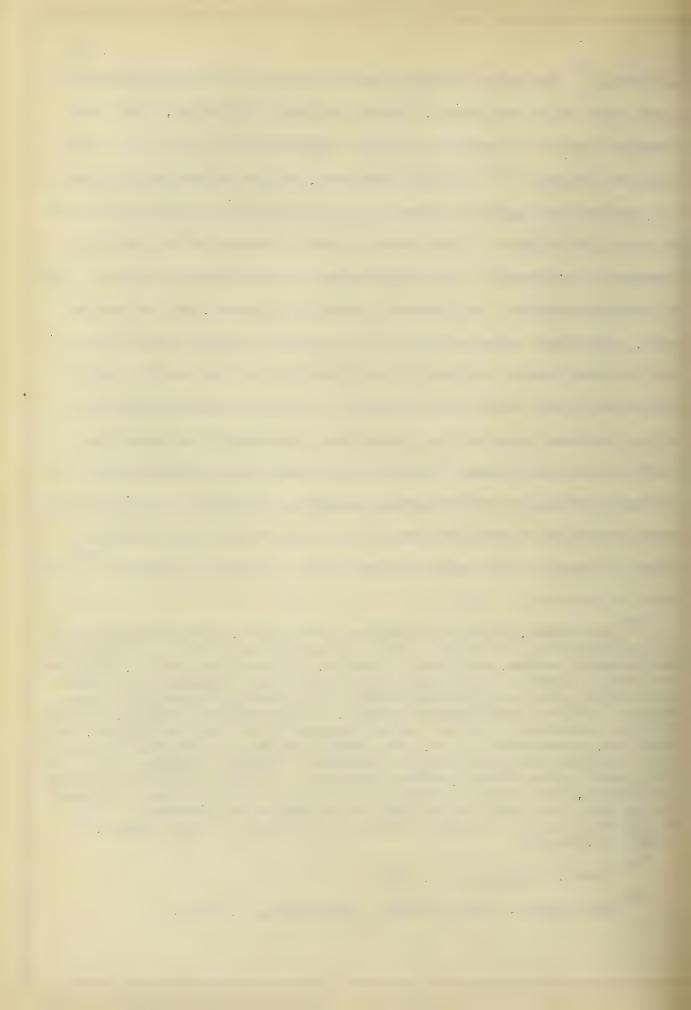


his king. Moreover the king issued orders that safe-conduct be given "our felon and enemy, Robert, bishop of Glasgow," with his servants and his property upon his departure for Rome in the custody of a nuncio. 100 In 1309 the pope, either dissatisfied with the concessions made by Edward II or thinking the opportunity ripe to press the claims of the church, sent a messenger to the king bearing a statement of the grievances of the English church. Four of these concerned the clerical immunity: bishops, religious persons, and clerks were called before secular justices for criminal and personal cases and were often fined by the lay courts; ordinaries were not permitted to arrest or detain clerks accused of crime: persons known to be clerks were frequently sentenced to death unless an ordinary appeared to demand them; clerks were subjected to trial by twelve laymen according to whose testimony they were convicted or absolved and in the latter case the prelates were not permitted to make further inquiry into the charges. 101 To

[&]quot;Ac demum, a vetitis nesciens abstinere, set divini nominis & suae honestatis oblitus: Non ut Praesul pacificus, set belliger: Non altaris Levita, set equo elevatus, Clipeum pro Infula, Gladium pro Stola, Loricam pro Alba, Galeam pro Mitra, Lanceam pro Baculo Pastorali, inter inimicorum dicti Patris nostri & nostrorum consortia, contra ipsum Patrem nostrum, in guerra sua Scotiae, ordine turbato, assumens; contra ipsius juramenti debitum hostiliter, ut proditor, insurgebat; quem, sic armis indutum, ad privatam & honestam custodiam bellicus eventus adduxit." Rymer, Foedera, III, 121. Five years later Edward orders the monks of Ely to provide lodging for Robert, who is to be kept by them at his own charge, the pope having sent him back "to be kept in a castle or fortress at the king's will until Scotland should be recovered." Rot. Claus., 7 Edw. II, p. 83.

¹⁰⁰ Rymer, Foedera, III, 118.

^{101 &}lt;u>Ann. Lond.</u>, 1308 (Stubbs, <u>Chronicles</u>, I, 166).



this the king replied through the medium of Archbishop Winchelsea "that he wished as an obedient son of the church to obey the most holy pope and the holy Apostolic See as far as possible in all things saving the rights of the crown." 102

In January 1308 Edward following the dictates of the pope ordered his sheriffs to arrest the knights of the Temple and confine them in the several royal prisons throughout the kingdom. 103 Their offenses were for the greater part religious and they were soon delivered to the ordinaries of the various dicoceses in which they were confined; 104 William de la More, the master of the Temple in England, was delivered to Andrew, bishop of Durham, who, as patriarch of Jerusalem was considered his ecclesiastical superior. 105

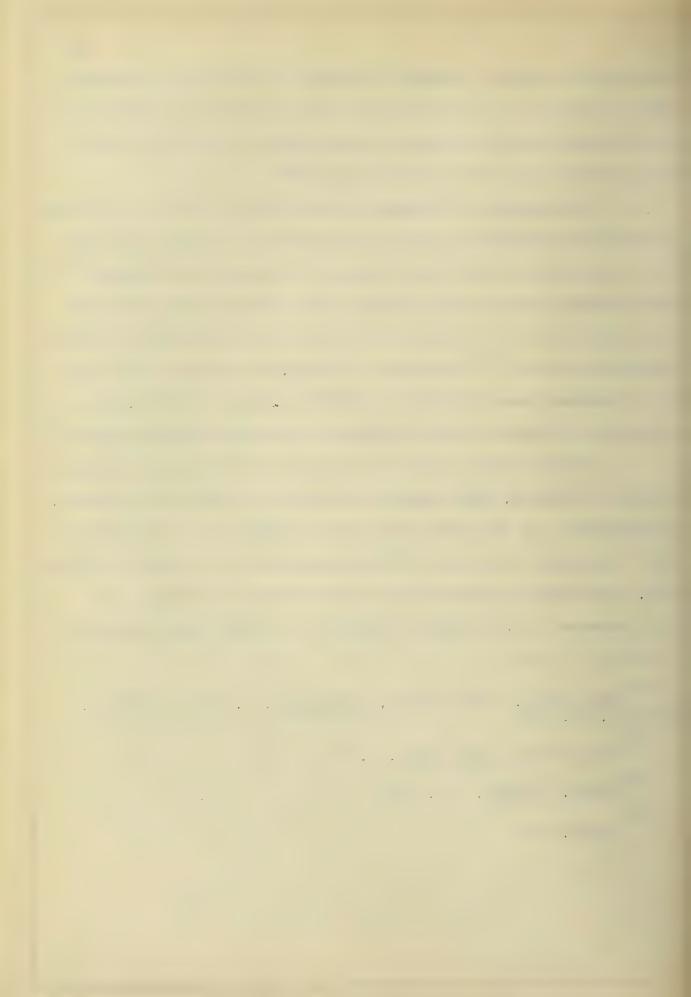
During the session of parliament in 1324 Adam de Orleton, bishop of Hereford, was accused by the king of aiding his patrons, the Mortimers, in the rebellion that had taken place two years before. An inquiry was made by "the legal men of the county of Hereford, who should say whether that one adhered to Mortimer and other enemies of the king and whether he assisted these enemies

¹⁰² Ann. Lond., 1309 (Stubbs, Chronicles, I, 167); Wilkins, Concilia, II, 328.

¹⁰³ Thom. Wals., Hist. Ang., I, 120.

Rymer, Foedera, III, 274.

^{105 &}lt;u>Ibid.</u>, 83.



with armed and mounted men." The bishop would say nothing to these charges for some time but at length he objected that he was the humble minister of God, that as a bishop his person was sacred, and that after the pope he was under the authority of the bishop of Canterbury." Upon this statement the archbishop and the bishops who were present arose and claimed him for the church, whereupon the king delivered him to the custody of the archbishop to be held until he should again be called to court. Meanwhile the clergy organized for resistance: letters were sent to the pope giving the particulars of the case and as many bishops as could be

[&]quot;Et deinde cum pdcus Rogerus cum exercitu suo pdco venisset versus Ledbury in Comitatu pdco apud Bosebury ubi Adam Episcopus Hereford, fuit, qui extunc extitit de concordia & adherentia pdci Rogeri, & ibidem habuerunt colloquium secretum adinvicem, & habito consilio inter eos, idem Rogerus cum toto exercitu suo pdco abinde recessit usq: . . . Et in crastina die sequente, idem Episcopus existens apud Bosebury misit pfato Rogero, in afforciamentum exercitus sui pdce apud Ledebury, quosdam homines ad arma cum equitatura ipsius Episcopi,quorum adventum pdcus Rogerus cum toto exercitu suo expectavit ibidem." Rot. Parl., II, 427; Ada. Mur., Cont. Chron., 42.

^{107 &}quot;'Domine Rex, vestra regiae majestatis reverentia semper salva, ego Sanctae Ecclesiae Dei minister humilis, membrum ejus, et Episcopus consecratus, licet indignus, ad tam ardua nequeo respondere, nec debeo, absque Domini Cantuariensis Archiepiscopi, post Summum Pontificem, mei directi judicis, cujus etiam sum suffraganeus, auctoritate, et aliorum parium meorum Episcoporum conniventia vel consensu.'" Thom. Wals., Hist. Ang., I, 172.

[&]quot;At this word alle the bischoppes rise up, and chalenged him as a membir of the Cherch; and so was he comitted to the keping of the bischop of Cauntirbury tyl the tyme that he schuld answere to thoo objectiones that schuld be aleggid ageyn him. Not many days aftir he was cyted to come before the juges. Ther went with him the erchbischop and other ten bischoppis, with the Crosse of Cauntyrbury, and there thei cursed alle thoo that schuld ley ony hand in violens of this Adam, bischop." John Capgrave, Chronicle of Eng., 192.

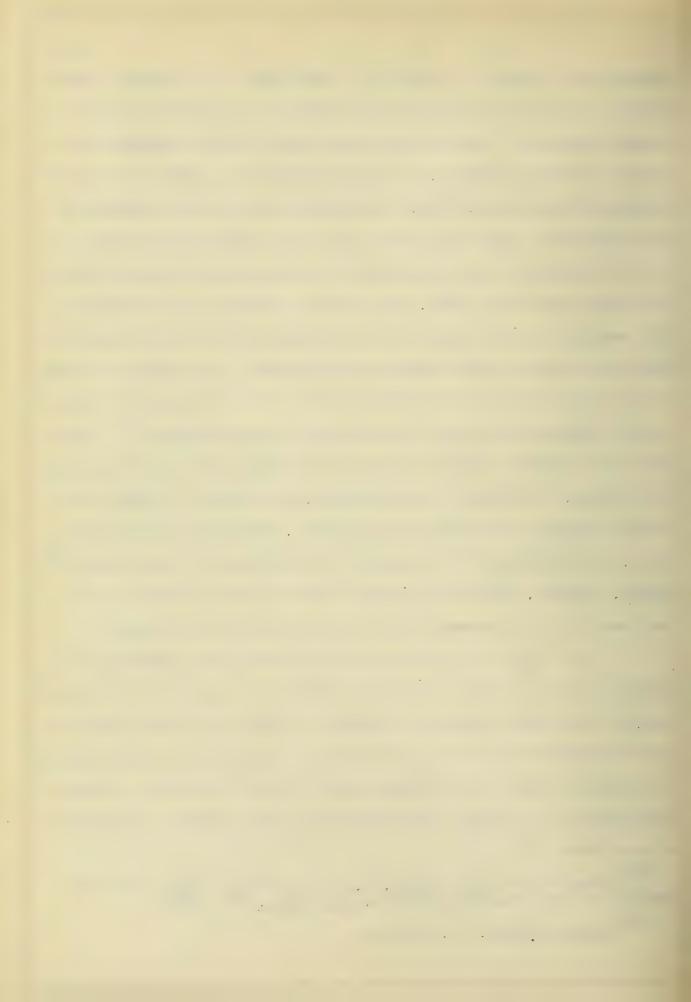
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reached were summoned to London in order that the churchmen might present a united resistance to any attempt to subject Orleton to a secular judgment. When a short time later the king summoned the bishop for final judgment, he was accompanied to court by the archbishops of Canterbury, York, and Dublin and ten other bishops in full vestments. Appearing before the king they grouped around the cross of Canterbury and threatened to excommunicate whoever should lay hands upon Bishop Adam, then having delivered their defiance, they marched proudly away with the accused still in their custody. When the king recovered from his astonishment, he wrathfully ordered the confiscation of the temporalities of the bishop, but Orleton himself remained under the protection of the archbishop. 109 Meanwhile the pope was moved to action and letters were sent from Rome to the king, the queen, the Despensers, and various bishops, protesting against the treatment of Orleton, recalling his past services, and pointing out the rights and liberties of the church. 110 Edward, however, remained obdurate and the bishop became one of the leaders in the movement for the overthrow of the king.

In spite of the fact that the clergy were generally victorious in their clashes with the state over the matter of clerical immunity there was a growing tendency on the part of the judges to limit the benefit as far as possible. A clerk who was found guilty of burglary in Kent was not delivered to the ordinary who claimed him because of the fact that there were other charges against him

¹⁰⁹ Thos. Wals., <u>Hist. Ang.</u>, I, 171. The <u>Rot. Parl.</u> made no mention of the dramatic features, <u>Rot. Parl.</u>, II, 428.

¹¹⁰ Papal Letters, II, 468-469.



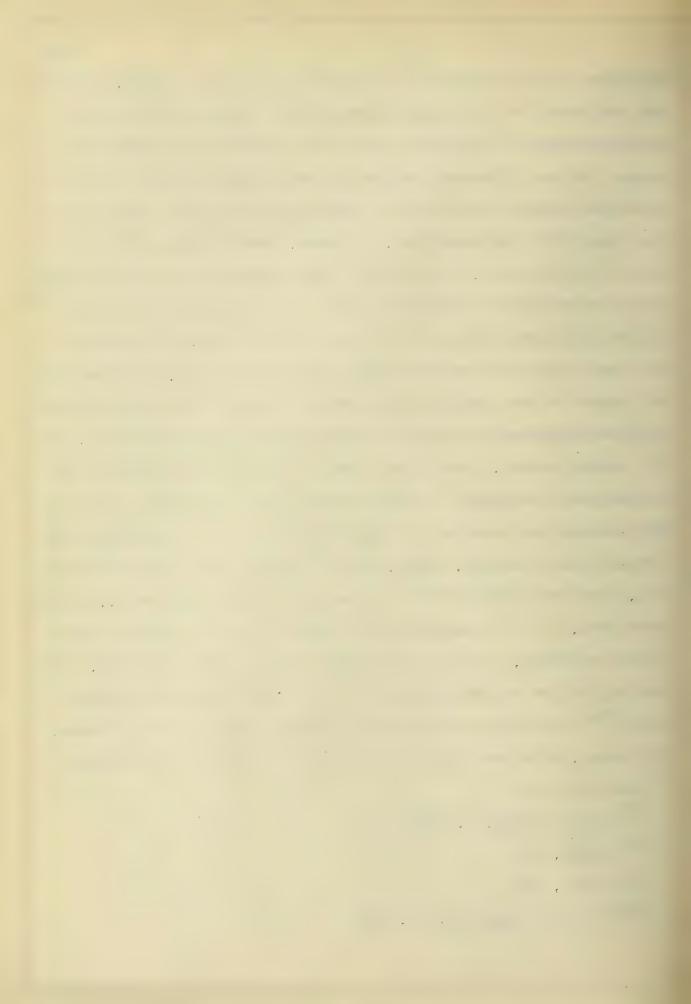
which had not been tried. 111 In another instance a clerk, who had been delivered to the bishop's prison as a clerk and was there awaiting purgation, murdered one of the keepers in an attempt at escape. He was afterward retaken and was brought before the justices who ordered his immediate execution despite the privilege of his clergy. 112 The churchmen, it seems, were becoming less confident of their safety, for here and there appears the record of an escape or of flight immediately after the commission of a crime. 113 In 1316 Archbishop Reynolds on behalf of the clergy protested to the king against the encroachments made by the secular courts upon the rights of the clerical jurisdiction. Among the other practices which he denounced was that of "doing anything against clerks, in the secular courts, that places them in the peril of death or the mutilation of members." He also asserts that the king's justices have adopted the practice of dragging clerks out of sanctuary and forcing them to abjure, which, since they can not judge ecclesiastics, they are powerless to do according to law. Moreover, he protests that, if it is admitted that judges have the right to force clerks to abjure, they have the right to put clerks to death, for such is the law regarding people found in the realm after abjuration. 114 The king replied that "a Clerk, fleeing to the Church, for Felony, to obtain the Privilege of the Church, if he affirm

Eyre of Kent, I, 154.

¹¹² Ibid., 86.

¹¹³ Ibid., 155.

¹¹⁴ Wilkins, Concilia, II, 461.



himself to be a Clerk, he shall not be compelled to abjure the Realm; but yielding himself to the Law of the Realm, shall enjoy the Privilege of the Church, according to the laudable Custom of the Realm heretofore used." The basis of another specific complaint was the failure of the judges to deliver to the ecclesiastical courts clerks who confessed their guilt, and who frequently became informers. This abuse the king promised to remedy; and he commanded the delivery of clerks to the ordinary whenever it should be demanded in due form. In 1317 the pope, apparently not satisfied with the results of his earlier efforts, addressed a letter to the legates in England, commanding them to lay before the king an account of the wrongs suffered by the church at the hands of the secular judges and to ask him for redress. 118

In 1327 Bishop Adams of Hereford had revenge for the injuries that he had suffered at the hands of Edward II, for in that year largely as a result of his own plotting, Rober Mortimer and the adulterous Queen Isabella deposed the king and set themselves up as regents for the young Edward. Adam was rewarded by the restoration of his lands and the chattels which were returned to him on the ground that the proceeding against him was erroneous inasmuch as he had never submitted himself to the judgment of the court.

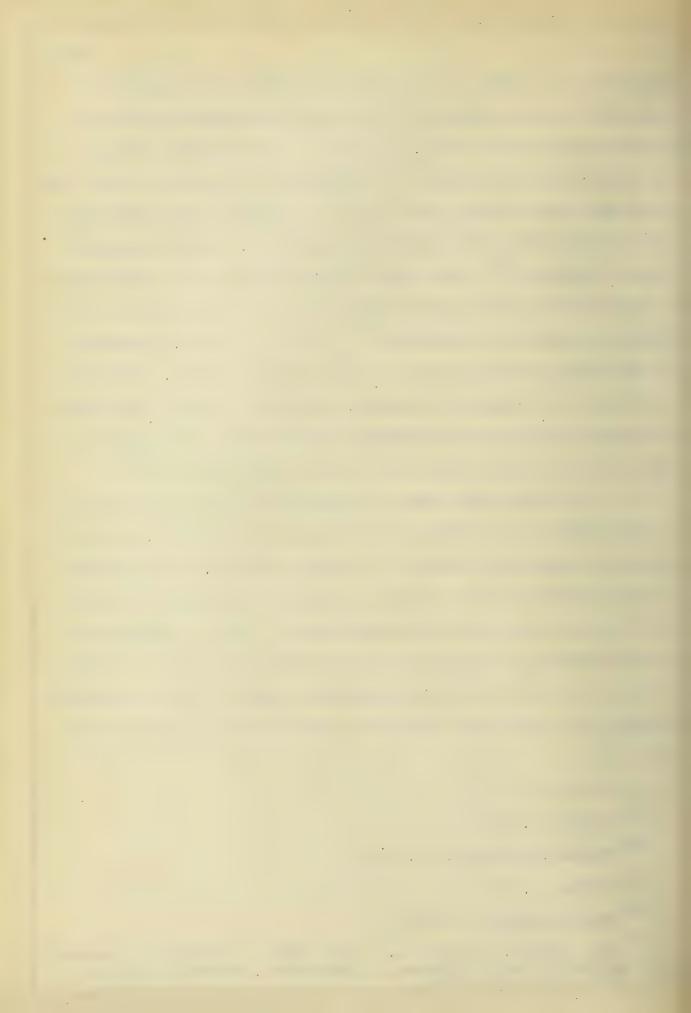
^{115 9} Edw. II, 15.

Wilkins, Concilia, II, 462.

^{117 9} Edw. II, 16.

¹¹⁸ Papal Letters, II, 132.

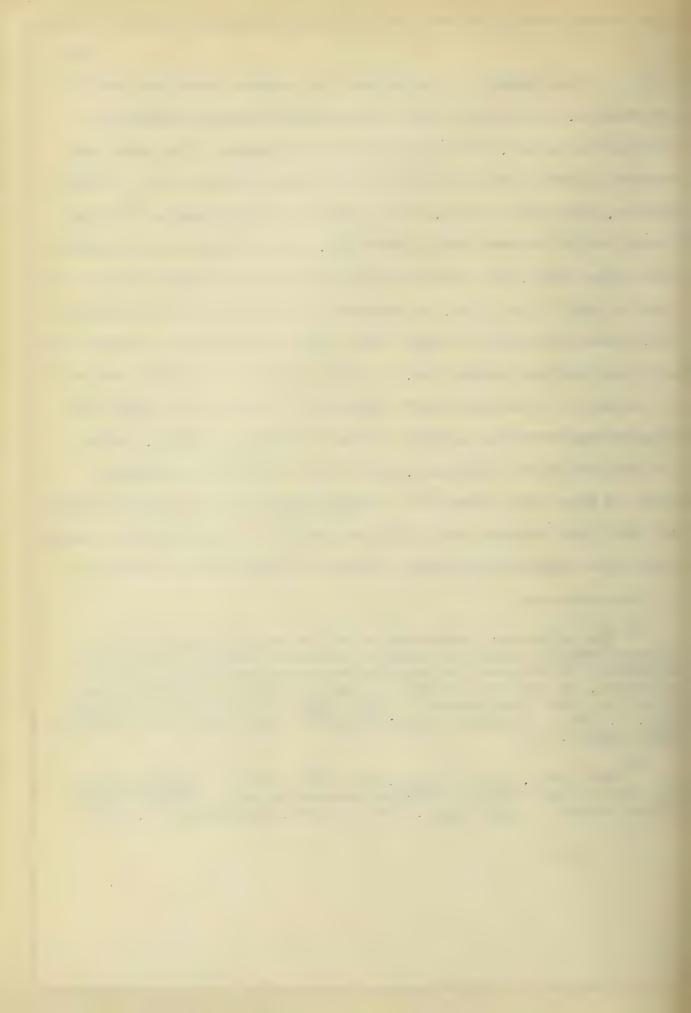
Rot. Claus., 1 Edw. III, p. 44. But the reversal of process takes another ground, mistakes in indictment, errors in record, etc. Rot. Parl., II, 427.



When Edward II was seized the younger Despenser and Robert Baldock, a churchman whom the king had vainly attempted to have made a bishop, were arrested in his company. Despenser was executed almost immediately but Baldock was turned over to Bishop Orleton, his bitter enemy, to be judged as a churchman. 120 The bishop, while he remained in Hereford, kept Baldock in the episcopal prison there, but when he had established his residence at the court a short time later, he ordered his prisoner to be brought to London where he might be kept under close surveillance. There may have been another reason too, for the citizens of London were bitter enemies of the late king's favorite. At any rate Robert was dragged away from the custody of the "conniving" bishop, beaten and bruised by the Londoners, and at last confined in Newgate where he died soon after. 121 A large number of the English churchmen felt that Orleton was little better than a murderer and charges were filed against him against which he thought best to make a

[&]quot;Et episcopus Herfordensis ibidem praesens ipsum petiit tanquam membrum ecclesiae; quem justitiarii tanquam convictum de criminibus sibi impositis secundum consuetudinem regni Angliae habuerunt, et pro tali convicto ipsum episcopo Herefordensi sub poena qua decet tradiderunt." Ann. Paul., 1326 (Stubbs, Chronicles, I, 320). Murimuth says he was delivered after many insults. Cont. Chron., 49.

Ada. Mur., Cont. Chron., 49. The author of Annales Paulini says he was taken to Newgate because Orleton "did not have a proper prison." Ann. Paul., 1326 (Stubbs, Chronicles, I, 320).



defense. 122 In the same year Thomas de Dunheved suffered for his loyalty to the deposed king. Returning from Rome, where he had been in interest of Edward II, he learned that the latter was in prison and he therefore set about to arrange his escape. Before the plot was fully developed it was discovered and Thomas was arrested and taken before the Queen Isabella, who ordered his imprisonment in Pomfert castle. With another he plotted the murder of his keepers and a subsequent escape; but the attempt failed, and he died soon after from the rigors of his imprisonment. 123

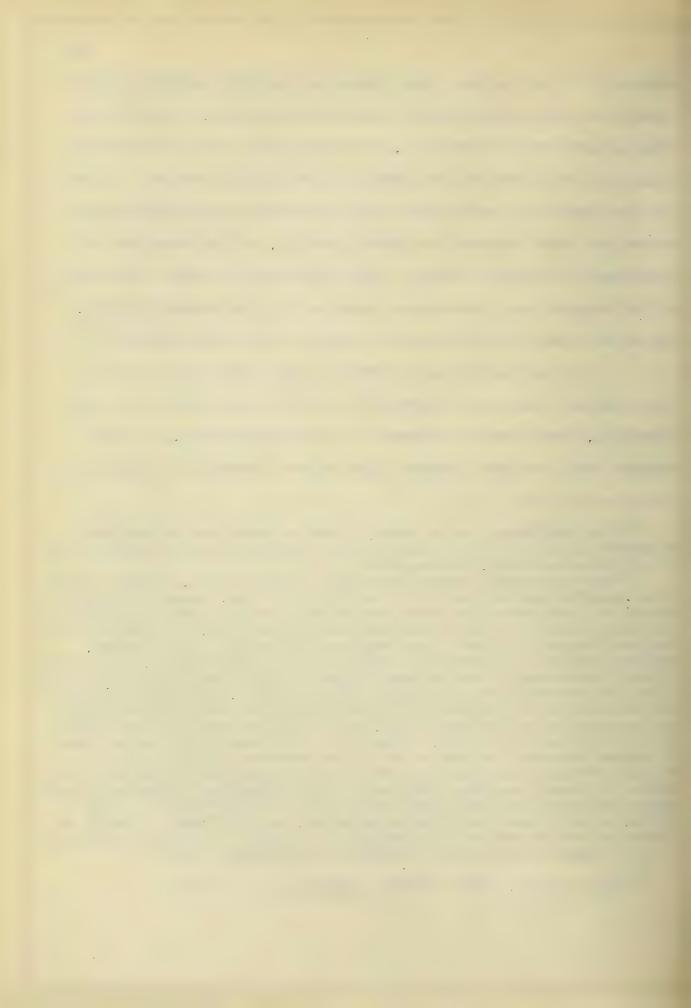
In the later days of Edward I the churchmen had to a large extent been on the defensive; but the much weaker rule of .

Edward II, their partial success in the Orleton case, and the thought that the young Edward might prove susceptible resulted in

¹²² The following is an extract from a sworn and subscribed statement made by John Prickehare and recorded in the Cartulary of St. Swithun's priory, Winchester.

[&]quot;Et subsequenter, mense Februarii ejusdem anni, eundem magistrum Robertum de Baldoke, invitum et renitentem, mandavit et fecit adduci ad predictam civitatem Londoniarum et in sinum et potestatem persecutorum et inimicorum suorum predictorum, eis demque prosecutoribus et inimicis ipsum magistrum Robertum, tunc ibidem, puplice exhibuit et exposuit, exhiberive et exponifecit, ab eisdem libere capiendum et occidendum. Idemque dicti Magistri Roberti inimici et persecutores ipsum Magistrum Robertum, per predictum Magistrum Adam et de mandato ipsius ad Civitatem predictam adductum. ac ipsum exhibitum et expositum, ut ab eisdem caperetur et morti per violenciam traderetur, ceperunt in civitate Londoniarum, anno et mense Februarii supradictis; et in carcere, vinculis, ac tormentis gravibus posuerunt, et sic positum continue hujusmodi vinculis et tormentis adeo graviter et (in) humaniter affixerunt quod ipsum Magistrum Robertum anno domini M° C. C. mo XVIJ, mense Junii, in civitate predicta Londoniarum, per hujusmodi vincula et tormenta, nulla auctoritate Judicis aut cause cognicione premissa, ex odii fomite occiderunt." Grandisson, Register, 1541.

¹²³ Ann. Paul., 1327 (Stubbs, Chronicles, I, 337).

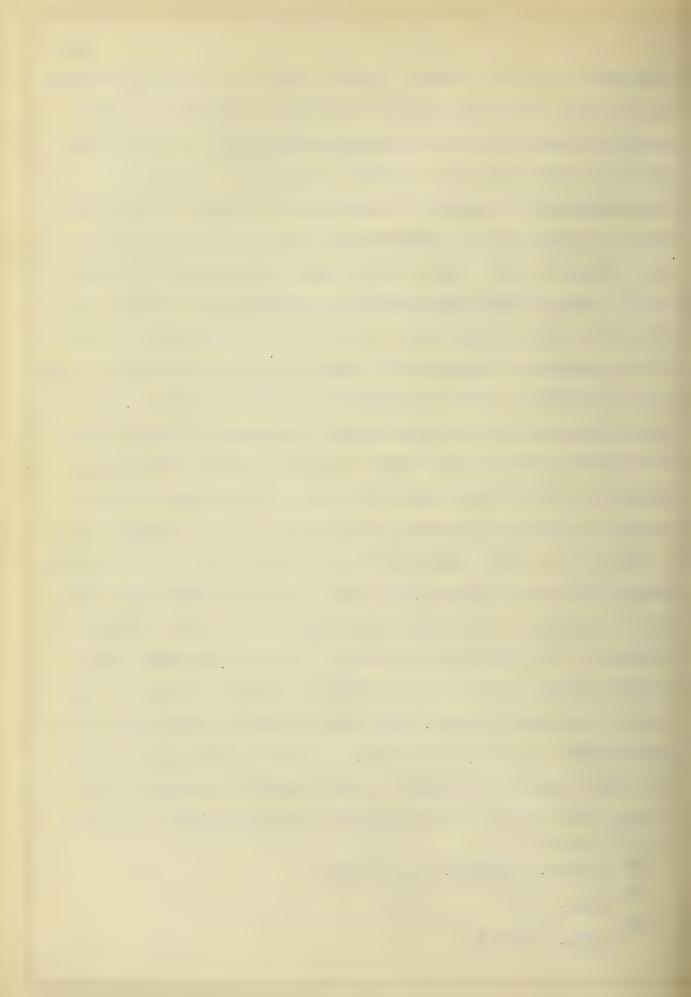


a return to their old claims. In the provincial council of Canterbury in 1329 the clergy drew up a statement of demands: clerks taken for felony should be delivered immediately to the ordinary; goods of clerks arrested for crime and purged in the court of the ordinary should be returned to them at once; clerks liberated by purgation should not be rearrested for the same offense by the secular officers so that their first purgation would avail them nothing. 124 These demands were reasonable enough in the light of the old custom save possibly the first one; and the king and his council took immediate exception to that in their response: clerks arrested for felony should be delivered to their ordinaries, but those ordinaries should give bail for the return of the clerk to the secular court to plead before the royal justices 25 oncerning the goods of the purged clerks the claim of the clergy was to be allowed by the special letters of the king in each instance: and in answer to the last complaint the king said that he did not wish clerks to be twice punished, nor were such punishments inflicted with his consent. The clergy were alarmed and at once returned a rejoinder to the answer of the king. They now petitioned that clerks once delivered to the ordinary should not be made to reappear in the secular courts, that clerks purged of guilt have their goods without any special process, and that the king give a positive order that in the future no clerk should be punished twice for the same offense. 126 In spite of the prohibitions that had

¹²⁴ Wilkins, Concilia, II, 316-319.

¹²⁵ Ibid., 318.

¹²⁶ Ibid., 318-319.



been laid on the excommunication of royal officers by Edward I, the clergy returned to that practice, following the example of Archbishop Winchelsea and issued general sentences of excommunication against all who should arrest or detain clerks. In 1334 the sheriffs and royal bailiffs were moved to petition the king to afford them relief from this peril to their souls which they were forced to undergo in the execution of their duties. 127

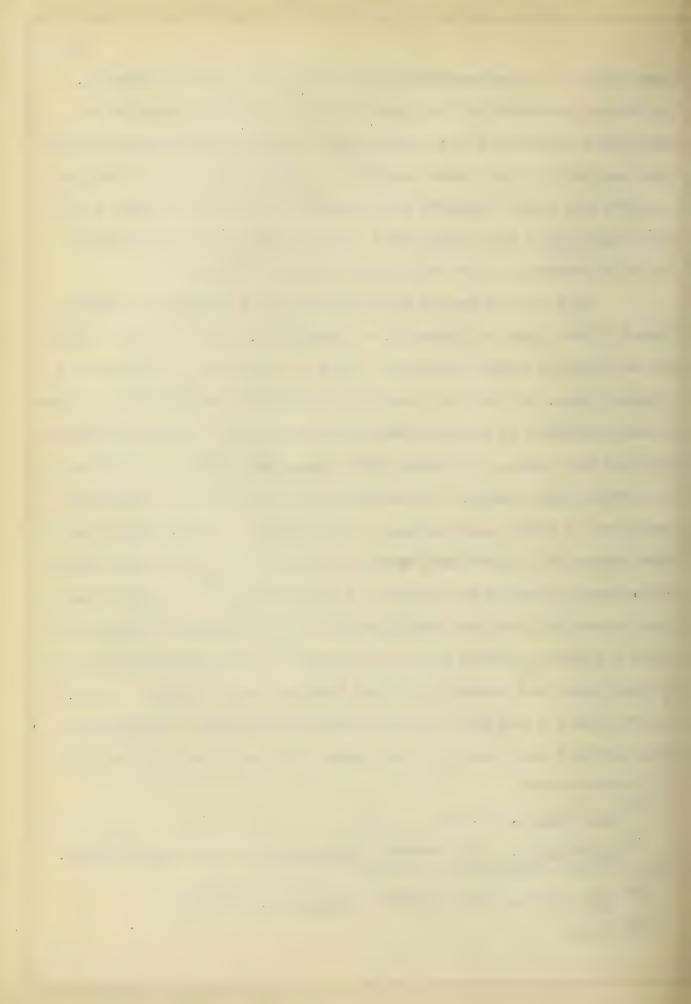
One of the men of major importance during the reign of Edward II was Hamo de Chigwell, a fishmonger, who had become sheriff and finally mayor of London. He was reëlected to this office several times, but at last won the enmity of Queen Isabella because he was suspected of sympathy with the Lancastrian enemies of Mortimer and the queen. It seems that there would have been difficulty in proving this charge, for he was taken into custody accused of receiving a thief and sharing in the plunder. He was convicted on this charge but pleaded that he was a clerk and was then delivered to the bishop of London who appeared to claim him. 128 In less than a year he was admitted to purgation and on his return to London was given a rousing welcome by the citizens. 129 The queen was alarmed by this reception since it pointed Hamo out as a popular leader, and therefore a new writ for his arrest was issued charging him with contempt and breach of the peace. 130 Hamo fled in time to

¹²⁷ Rot. Parl., II, 76.

Ann. Lond., 1329 (Stubbs, Chronicles, I, 245); Ann. Paul., 1329 (Stubbs, Chronicles, I, 346).

Ann. Lond., 1330 (Stubbs, Chronicles, I, 246).

¹³⁰ Ibid.



escape arrest only to die a short time later. About the same time there occurred a fight between two clerks in Westminster Hall. One was killed and the other, apparently not claimed by the ordinary, was hanged.

In 1340, during one of the numerous suspensions of hostilities that took place during the early years of the hundred years war. King Edward returned to England and summoned the majority of the chief administrative officers of the kingdom to the Tower. Then he taxed them with dishonesty and treason saying that it was on their account that he was lacking in funds necessary to a successful prosecution of the war. The majority of the officers who were brought before him he ordered confined in the Tower; but his chancellor. Robert Stratford, reminded the king that he was also bishop of Chichester and called to his attention the papal canon which holds it unlawful to seize or forcibly detain bishops. whereupon the king allowed him to depart, though he removed him from his office. At the same time Edward sent his officers to arrest John de Stratford, archbishop of Canterbury: but the latter prudently withdrew to sanctuary in Christ Church, and from his retreat sent letters of remonstrance and warning to the king. 132 king, he said, had been moved by the counsel of evil advisors to Seize various clerks and magnates of the realm in violation of the Great Charter and to the peril of his soul; the persons who advised such conduct were declared excommunicate and the king was warned

¹³¹ Robt. Aves., Gest. Edw. Ter., 323.

¹³² Ibid., 324.



against associating with them; as for himself, he stood ready to undergo the judgment of his peers saving in all points the state of the holy church, of himself, and of his order. Moreover the archbishop preached a series of sermons in which he declared that he stood in a similar position to St. Thomas and that it was not unlikely that he should meet the same fate. 134 The affair was at last settled in 1341, the result being a victory for Stratford. 135

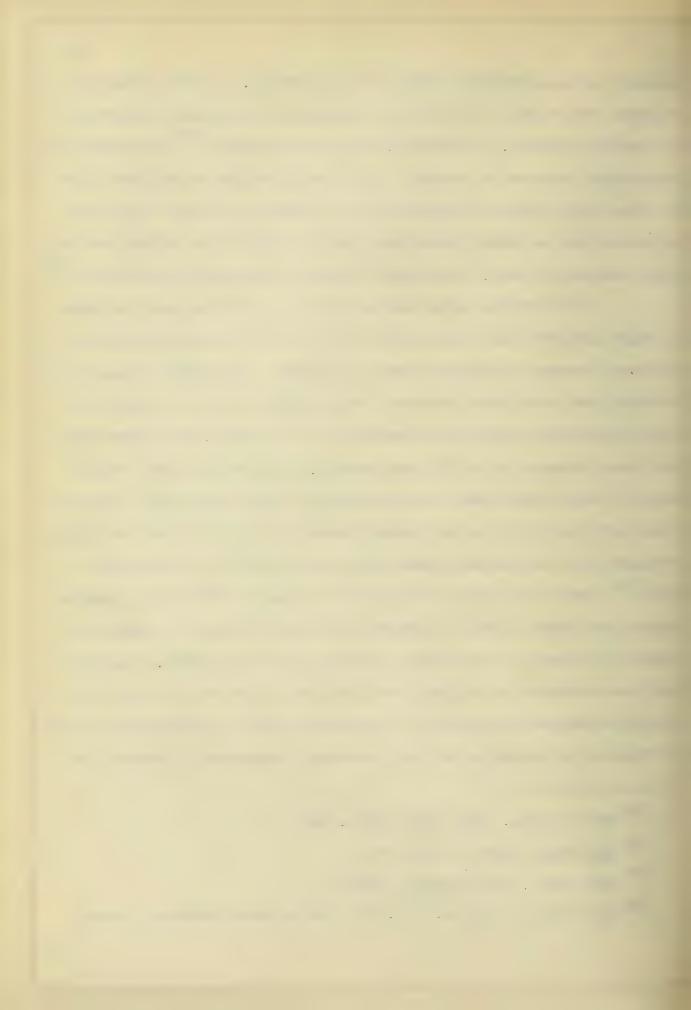
In 1354 the king held court at St. Albans and the abbot of that monastery was presented by the jurors to answer for the wholesale escape of clerks from his prison. The abbot appeared by attorney and made five answers: he pleaded a general pardon, denied ever having custody of certain of the clerks, said that some had been released on sufficient surety, claimed that the others had all been recaptured save one who had taken sanctuary. In each case save the first he put himself upon the country, and the jurors returned that his answers were true; accordingly he was acquitted. One of the fugitives was Sir Richard Perers who appeared again five years later. Richard had been outlawed for escaping from the prison of the bishop of London at Storteforde, where he had been confined as a clerk awaiting purgation on the charge of having assaulted a bailiff of the bishop sent to recapture him and of failing to appear after the customary summonses to answer for

¹³³ Robt. Aves., Gest. Edw. Ter., 324.

¹³⁴ Eng. Hist. Rev., VIII, 85.

¹³⁵ Ada. Mur., Cont. Chron., 120.

¹³⁶ Gest. Ab. St. Alb., III, 84. The escapes numbered twenty.



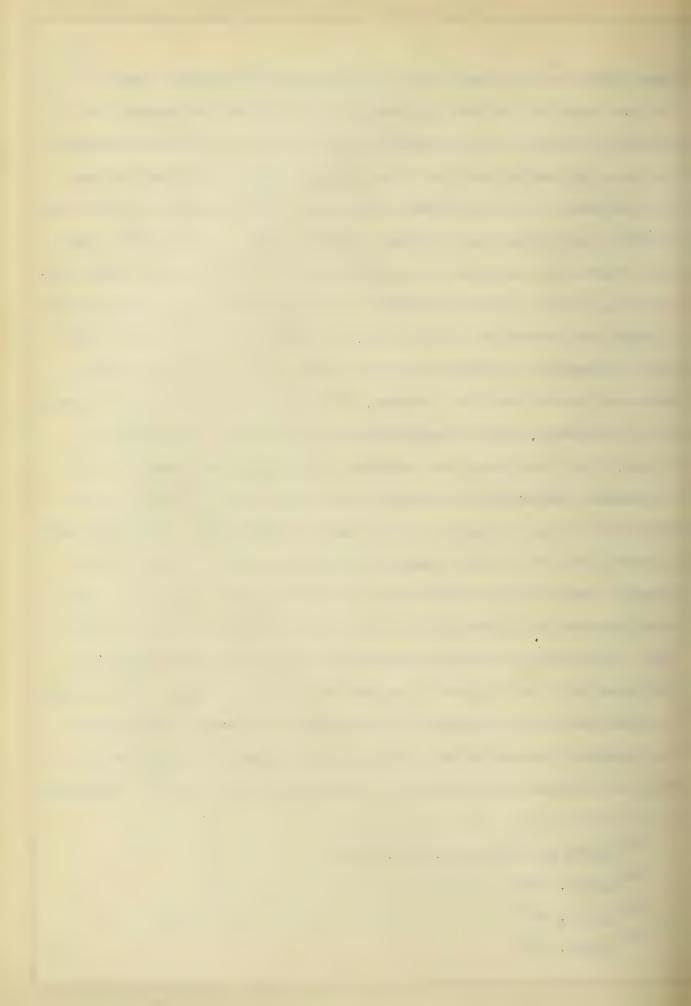
these offenses had been read in four successive county courts. 137 His son appealed to the king against the outlawry alleging that he had been injured by the resulting confiscation. The king reopened the case by special writ and the younger Richard pleaded before the justices that the outlawry had been illegal because at the time of issue his father was confined in the bishop's prison. 138 For some reason the case was not decided at this time and was again reopened in 1375. At this hearing it appeared that the lands of Sir Richard had escheated to his lord, the abbot of St. Albans. The abbot appeared to defend the case alleged the escape as stated above and added that Sir Richard, during the time that the outlawry was in abeyance, was in Bedfordshire "ranting and perpetrating crimes." but that when the sentence of outlawry was about to be pronounced the accused forseeing its effect had returned of his free will to the prison of the bishop of London. 139 Young Richard rejoined that his father had been forcibly seized by two of the bishop's bailiffs and delivered to the episcopal prison. In the surrejoinder the abbot denied this and the issue was left to the jury. Then young Richard defaulted and the case was dismissed. The cause of this failure to appear was the discovery of an attempt to introduce false evidence: a statement had been introduced by the younger Richard relating the circumstances of his father's arrest and signed by the keeper of the bishop's prison. 140 The abbot

¹³⁷ Gest. Ab. St. Alb., III, 200.

¹³⁸ Ibid. 203.

¹³⁹ Ibid., 207.

¹⁴⁰ Ibid., 209.



forming him of the deposition that had been introduced. The bishop returned the certificate of Sir Richard's purgation and added that he had investigated the statement of the keeper and found that it was false and made under the influence of bribery. Richard had returned of his free will, lateral saying that he would soon be released by the aid of his powerful friends. The keeper further testified that when Sir Richard was received into the prison a chamber was arranged for him and he went at large when and wherever he pleased; that he went provided with his bow to the fields, woods and elsewhere wherever he chose and of his own accord; and that no manner of guard was set over him. 143

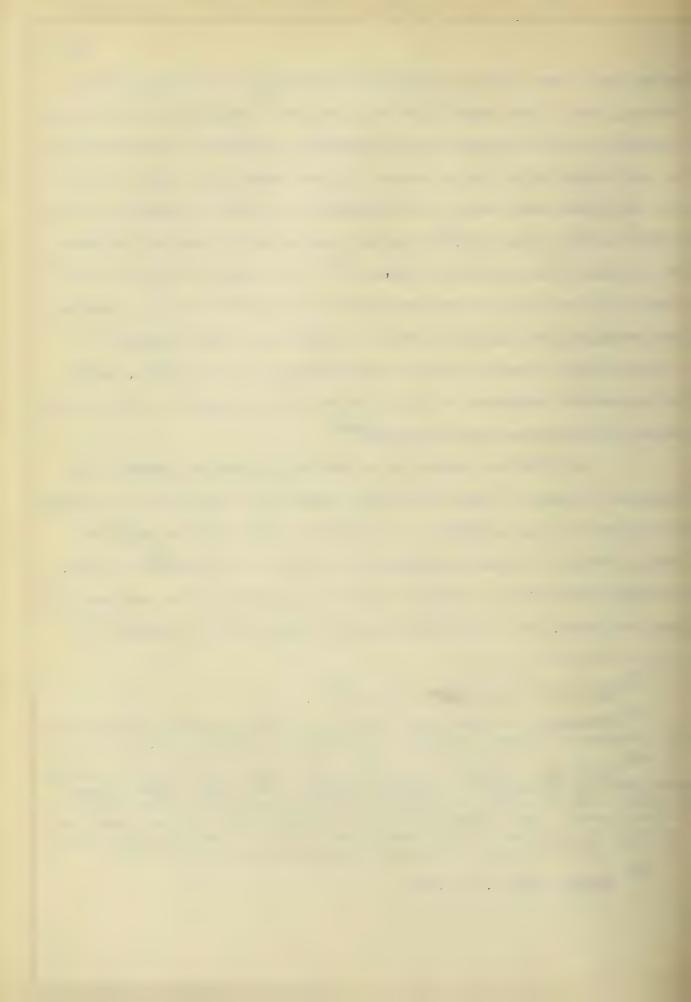
In 1353 two abbots were before the courts charged with criminal offenses. Abbot William of Meaux was appealed as a receiver of thieves by the cellarer of the convent who hoped to supplant him in office. He was confined for a time in the castle of York, was admitted to bail, and was finally acquitted by the justices of gaol delivery, but "not without great expenditure of money." 144

¹⁴¹ Gest. Ab. St. Alb., III, 210.

Evidently he spoke the truth for in 1351 he was pardoned "at the request of Queen Isabella." Rot. Pat., 25 Edw. III, p. 106.

Gest. Ab. St. Alb., III, 213. The case is not clear: Richard was admitted to purgation in 1250 (ibid., 208) which should have released him from all penalties for his crimes, yet he was pardoned a year later. But there is another confusion for his outlawry was definitely included in the pardon, yet it is the confiscation incident to the outlawry that leads to the action at law in 1275.

¹⁴⁴ Chron. Melsa, III, 84.



Thomas of St. Albans with one of his monks was charged with assault upon one Nicholas, but he established to the satisfaction of the court that Nicholas was a serf of his manor at Kingsforde and "therefore Nicholas is in mercy for false complaint." 145

King Edward and his parliaments maintained very much the same attitude throughout the reign as indicated by their actions on the early petitions of the clergy. In 1341 the clergy petitioned that no clerk be taken or imprisoned without process of law as sometimes happened. 146 The king replied that it was not his intention to do anything unlawful with regard to the clergy and if any churchmen had been arrested by his order it had been with just reason. 147 Three years later the clergy again raised the question of bigamy. This time they petitioned that clerks accused of bigamy be delivered to the ordinary for an inquiry into that fact before any judgment be given in lay court; bigamy they said, was a matrimonial cause on the same plane with bastardy and was therefore not within the cognizance of the secular courts. 148 The king in this instance agreed that the fact should be tried in the spiritual court but provided that the accused should remain in the royal prison without bail in the meanwhile. In the same year he conceded that no archbishop should be impeached before the justices for crime without royal command, until another remedy be ordained. 149

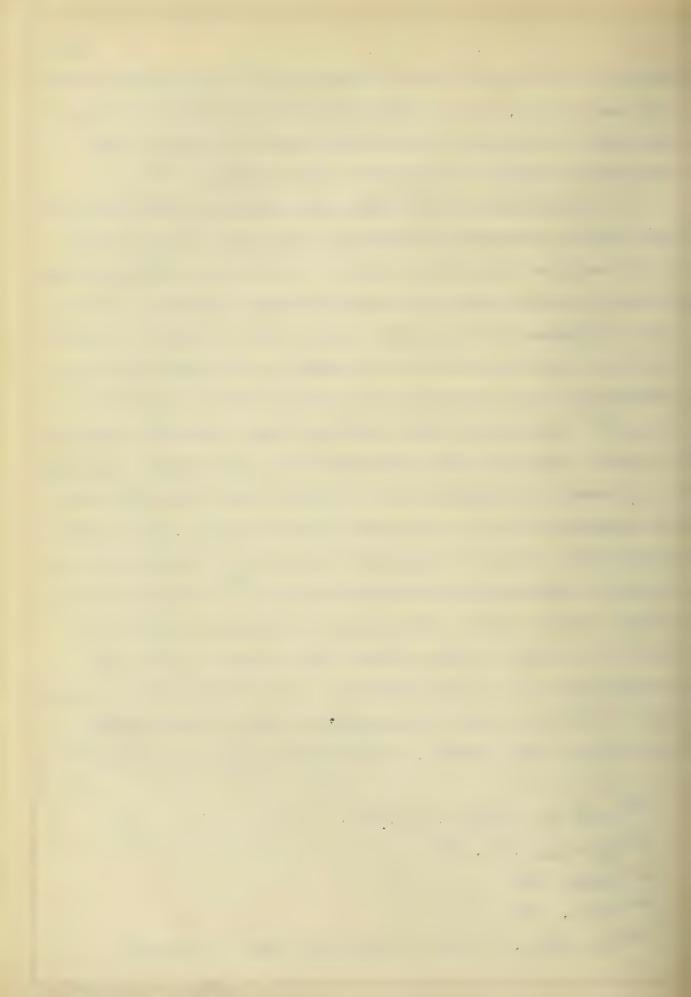
Gest. Ab. St. Alb., III, 39.

¹⁴⁶ Rot. Parl., II, 129.

¹⁴⁷ Ibid., 130.

¹⁴⁸ Ibid., 151.

¹⁴⁹ Rot. Parl., II, 152; 18 Edw. III, stat. 3, chap. 2.



In 1351 the important statute Pro Clero was enacted. The clergy had petitioned the king and in consideration of a grant from them he assented that clerks guilty of treason or felonies touching other persons than the king himself should enjoy the benefit of clergy and that clerks convicted of one crime should be delivered immediately instead of being remitted to a secular prison to await trial for any other offense with which they might be charged. But there was a condition to this grant which was of more importance than the concession itself. The delivered clerk was not to make an easy purgation nor was he to be allowed to enjoy any special privilege while he was in the episcopal prison. 150 A letter of Archbishop Simon Islip to his subordinates gives evidence that the primate, at least, took this condition seriously. After describing the contents of the petition submitted to the king, he adds that the king's officers pointed out that the clergy made their privilege the covering for the commission of many atrocious crimes, because they knew that an offender released by the secular court out of respect to God and His church would be gently handled: "they would be given all sorts of comforts for their delicate bodies and if they wearied after a time of this kindly treatment it would be easy to make an ungrateful escape." Moreover it was notorious that they were easily admitted to purgation which they made without difficulty, and many, all their apprehensions being removed, at once returned to their former evil ways. Islip regretted that in some cases this was true, and that by reason of it innocent clerks were led to follow the ways of the wicked. He therefore submitted the

^{150 25} Edw. III, 4, 5.



rules which were to govern the imprisonment of clerks convicted:
those who were notorious malefactors were not to be admitted to
purgation but were to be kept in prison on a strict diet which was
to consist largely of the "bread of sorrow and the water of anguish" though at times there were to be allowed a small quantity of
meat and beans. He also ordered that the reputation of any clerk
who was considered innocent should be carefully investigated before
he was set at liberty. 151

In the same year another petition of the clergy had to do with the condemnation of churchmen of all grades who were notoriously known to be clerks. They cited the hanging of a knight, the execution of a priest of Nottingham, and several other similar instances to prove their case, saying that after judgment they "were hanged as quickly as though they were laymen." "Which things ought not to be done by right, nor by reason of any crime if they were not first accused before an ecclesiastical court, degraded by their ordinaries, and then delivered to secular justice; and this was the first point for which St. Thomas died." The king evidently knew of the cases for he responded: it had always been the custom for the king to execute clerks guilty of treason against himself, his royal majesty, or the rights of his crown but he was willing that those guilty of any other form of treason be delivered to the ordinaries on condition that they be kept in perpetual prison. 153

The change in the tone of the clergy in the century between 1272 and 1377 is so obvious that it requires no comment.

¹⁵¹ Wilkins, Concilia, III, 13.

¹⁵² Rot. Parl., II, 244.

¹⁵³ Ibid.



From the position of boldly demanding their rights they have been reduced to one of humbly asking favors. They accept the royal concessions with gratitude and hasten to fulfill the royal conditions. They cease to claim for the ecclesiastical courts the exclusive jurisdiction in their personal actions. Clerks who feel aggrieved call upon the king for the enforcement of the statute of provisors: 154 the bishop of Norwich humbly submits to the king in an action for contempt and begs the royal mercy: 155 the archbishop of Canterbury himself, the primate of England, brings an action in the king's court to recover a debt of twenty marks from a lowly parish priest. Finally the principle for which St. Thomas gave his life is interpreted to be: "no clerk shall be executed by a secular court until he has been degraded." The steady pressure put upon the church by Edward I and by his grandson had done its work: benefit of clergy was on its downward path.

¹⁵⁴ Papal Letters, III, 391.

¹⁵⁵ Rot. Claus., 21 Edw. III, p. 338.

¹⁵⁶ Rot. Claus., 46 Edw. III, p. 479.



Chapter VI

THE CRIMINOUS CLERKS AND THE LAW

During the three hundred years following the Norman Conquest the procedure to be used in the trial of clerks accused of crime assumed a more or less certain form. On the side of the church the treatment of clerks delivered to the ecclesiastical courts for trial and punishment was definitely established, but on the side of the state the proceedings that were taken before the accused was given over to the church, were constantly varied. the reigns of the Conqueror and his successor the development of benefit of clergy is unnoticed by contemporary writers. Save that the bishop no longer sat in the communal courts there is no evidence of the development of the ecclesiastical tribunals. The recorded cases in this period had to do with vassals of the king and were therefore tried in the royal council with all the irregularity of feudal procedure. Odo and St. Karileph both made their claim of clergy, but both were judged in spite of it and their sentences were those commonly denounced against secular vassals for similar offenses.

The first recorded recognition of the privilege of the elergy appears in the Leges Henrici Primi, in which it is provided that the clerk accused of any offense shall be judged only by his bishop. The importance of this is nullified by two facts: the author drew upon continental as well as English sources for his material; frequent contradictions appear in his compilation. The

¹ See above p. 63, note 34.

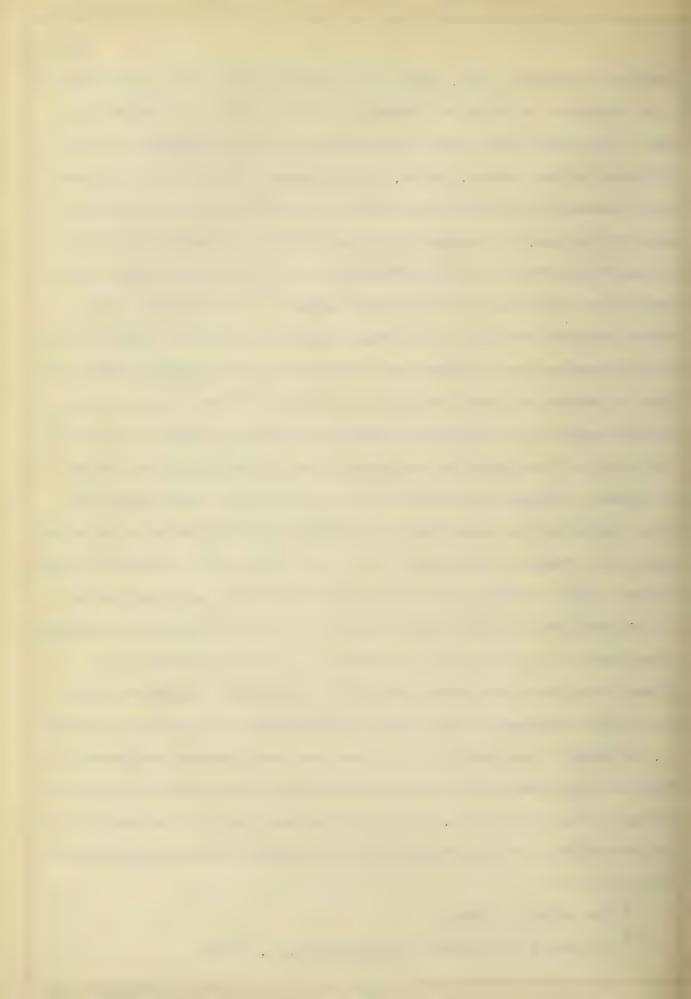
² Pollock and Maitland, English Law, I, 450.



charter of Stephen then, must be accepted as the first authoritative statement of clerical immunity as it existed in Norman England. But even here there is no hint as to the procedure to be followed in the arrest, trial, or punishment of accused churchmen. From a case of theft and adultery in York which arose during the time of Stephen, it appears that the clerk was accused and tried in court Christian and the officers of the king vainly demanded a remedy for the breach of the king's peace. In the same reign occurred another instance of clerical crime which had an entirely different termination. Osbert, an archdeacon, was appealed before the king of having poisoned Archbishop William of York. His accuser offered any form of proof but Osbert refused to submit to the jurisdiction of the court on the ground that he could not be judged by laymen. Stephen insisted that so atrocious a crime could be tried only in the royal courts and forced both parties to give security for further pleadings; but at the time of his death the matter was still unsettled and later Archbishop Theobald complained to the pope of the difficulties which he had encountered in getting Osbert out of the hands of King Henry. 4 It will be seen at a glance that these two cases are exact opposites. Likewise there is little evidence of the nature of procedure in the time of Henry II, although it appears that the one hundred clerical murderers of whom the king complained had escaped secular punishment through the agency of the ordinaries, and it is certain that in the cases which led directly to the Constitutions of Clarendon the accused church-

³ See above p. 55.

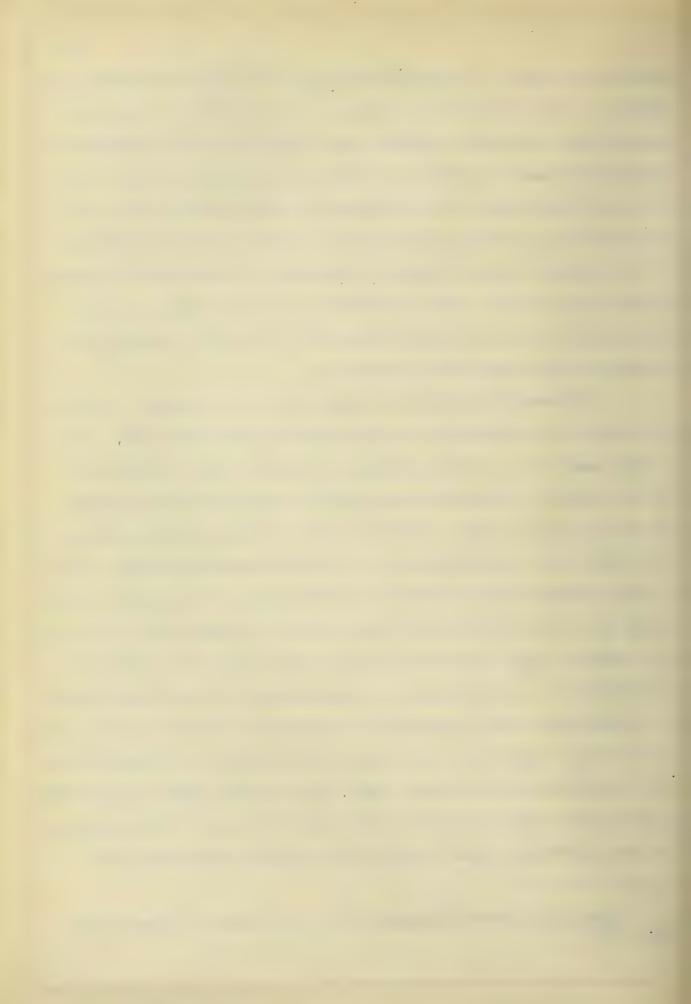
⁴ Pollock and Maitland, English Law, I, 452.



men were delivered to the ecclesiastical officials without any proceedings in the courts of the state. It is not until more than a hundred years after the conquest that the court rolls furnish testimony which make it possible to trace the criminous clerk from the time of his arrest to his delivery to his ordinary; even then the scarcity of evidence leaves open a great chance for mistake. But the narrow stream of records beginning at that time constantly enlarges until by the time of Edward III it has become a great flood which exhibits the whole procedure of benefit of clergy as accepted by the common law of England.

Although the English clergy constantly demanded the full privilege of the church as it was claimed by the canon law, the secular courts limited the offenses in which it was allowable as far as possible. This limitation grew up slowly with the common law and it was not until the exact limits of the specific wrongs were fixed that a definite rule of law was established which drew the line between cases in which churchmen were to be allowed their clergy and those in which they were forced to plead before the secular courts. One of the earliest exceptions came as a result of the Constitutions of Clarendon: churchmen as well as other vassals of the king were made answerable to the royal justices for the conduct of their baronies. At almost the same time the agreement between the king and the legate, Hugo, made clerks guilty of offenses in the royal forests subject to the secular justice. This arrangement was confirmed later but was never wholly accepted by the

⁵ Constitutions of Clarendon, sec. 11 (Stubbs, Select Charters, 139).

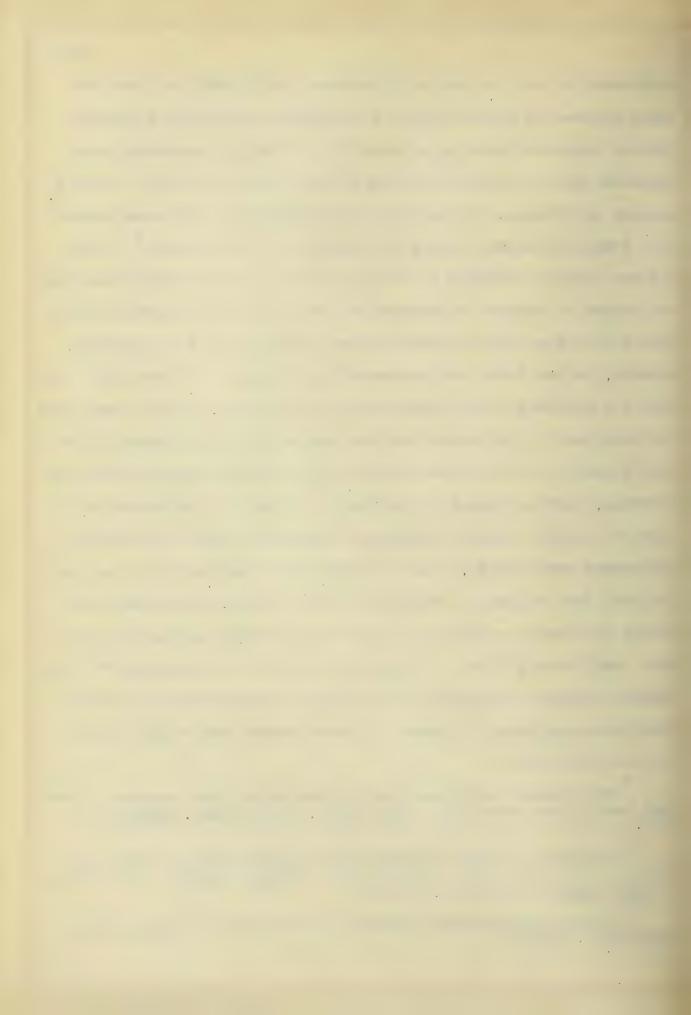


churchmen and was the basis of numerous complaints; nor did the state succeed in maintaining its advantage entire for a special form of procedure grew up by which the offending churchmen were punished upon a slightly different basis than the laity. A clerk accused of trespass in the forest was summoned in the same manner as a layman to appear before the justices of the forest. 6 If he did not obey the summons a writ was issued to his bishop directing the latter to command an appearance and in case the bishop made no return upon the writ the offender was outlawed. If he appeared, however, he was tried and sentenced as a layman. It was after this that the ordinary might claim him for the church, but it seems that the sole gain to the clerk was the escape from confinement in the king's gaol: he was obliged to meet any pecuniary penalty that was assessed, just as though he had been a layman. The record in the case of a clerk accused of certain trespasses reads as follows: "Afterward came Walter, dean of Northampton [and another] and petitioned for William ... because he was a clerk, and he was released to them as an open and convicted offender against the venison. And later William ... came and made fine of one mark."8 clergy attempted to avoid this by urging the ordinaries to take immediate cognizance of cases of forest breach and oblige the of-

The clergy complained that clerks were often amerced without ever having been summoned. Ann. Burt., 1225 (Luard, Annales, I, 362).

⁷ This was not true in every case. See pardon of the remainder of a three year gaol sentence for offences against the venison, in Rot. Claus., 22 Edw. I, p. 351.

^{8 &}quot;Forest Proceedings Treasury of Receipt," in Select Pleas of the Forest, LXXXIX.



penance. When a clerk was accused by report he was sometimes relieved of the necessity of finding sureties but if he was taken in actual offense he was treated as laymen.

That the clergy resisted the jurisdiction of the forest officers is shown by the case of one Gervais who was taken out of gaol by other members of the clergy. These wrongdoers were later summoned and defended themselves as clerks. 12 In another instance a chaplain was arrested for offenses against the venison and succeeded in escaping from the custody of the foresters. His goods, consisting of a bushel of wheat, a bushel of beans, half a bushel of oats, a pile of wood, some dishes, and a mare were taken into the hands of the king. 13

Treason was ill-defined until after the passage of the statute of 25 Edward III; but the royal courts, depending without doubt upon feudal law, frequently refused the immunity of the church to clerks accused of this crime. This attitude of the justices was indirectly recognized by the laws passed at the end of the thirteenth century which mention only those accused of felony as being delivered to the ecclesiastical courts. Similarly it seems that when the distinction between felony and the lighter of-

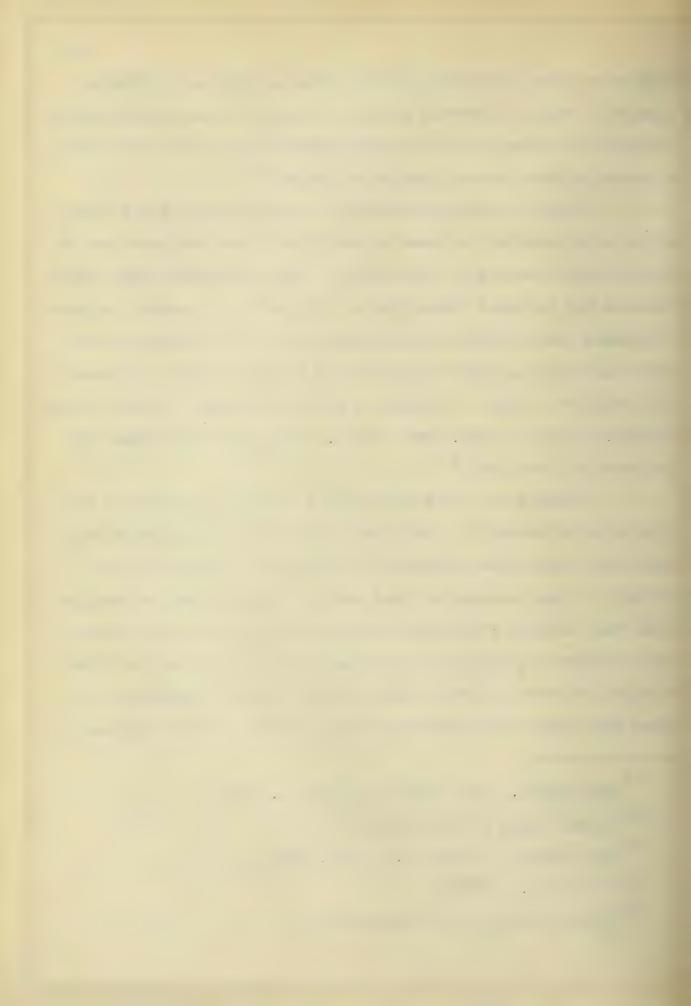
Ann. Burt., 1257 (Luard, Annales, I, 317).

¹⁰ Select Pleas of the Forest, XCI.

¹¹ Rot. Claus., 11 Edw. I, p. 208, 218.

¹² See above, p. 102.

¹³ Select Pleas of the Forest, 94.



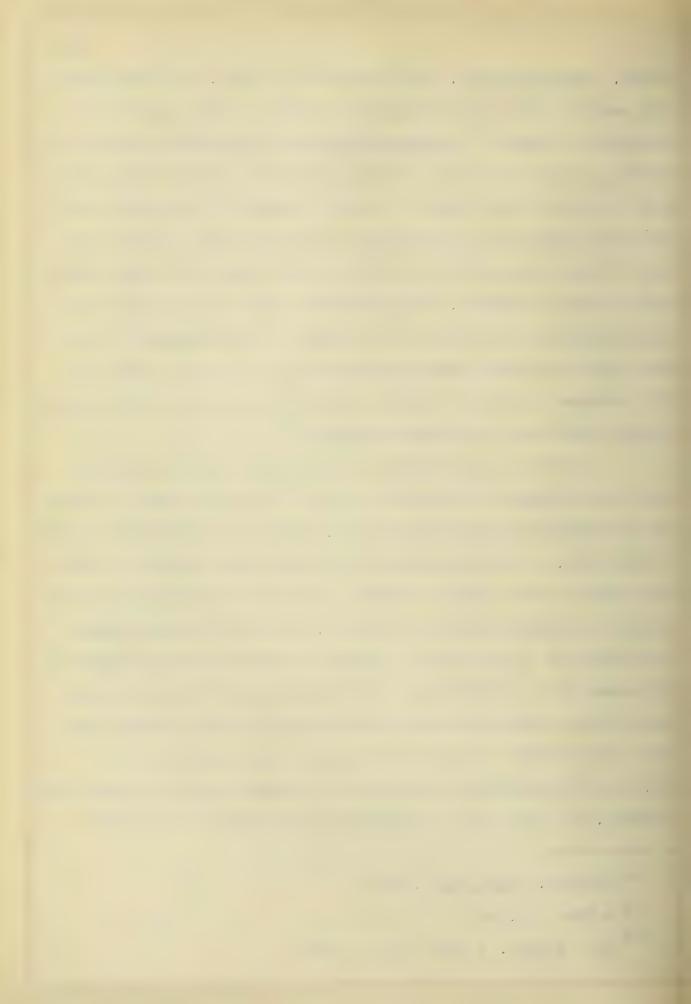
fenses, transgressiones, had taken definite form, the latter were also excluded from the catalogue of crimes in which benefit of clergy was allowed. Transgressiones were frequently created by statute. In one instance a certain parson was called before the king to answer a civil suit. He was released in this matter because the plaintiff did not appear; but the steward and the marshals of the household arrested the clerk because "he came before them clothed in doublet, [they] asserting that he was going about armed, contrary to the form of the statute of Northampton; 15 and they took the doublet from him for the king's use and John has been detained in prison from that time for this reason and he has besought the king to provide a remedy. "16

Certain quasi-criminal actions were likewise excluded from the privilege of the church. One of the most common of these was contempt for royal authority and, since the penalty was usually a heavy fine, it was natural that the king should refuse to allow such cases to pass from his hands. In 1292 the archbishop of York ordered the excommunication of Antony, bishop of Durham, because the latter had imprisoned two clerks who had been sent to him with the orders of the archbishop. The excommunication was published while Bishop Antony was with the king and in royal service; for this reason Edward I brought suit against the archbishop for \$\$120,000\$. The archbishop defended the contempt saying that none was intended, and added that "he ought not to answer in the king's

¹⁴ Makower, Cons. Hist., 408.

^{15 2} Edw. III, 3.

Rot. Claus., 5 Edw. III, p. 243.

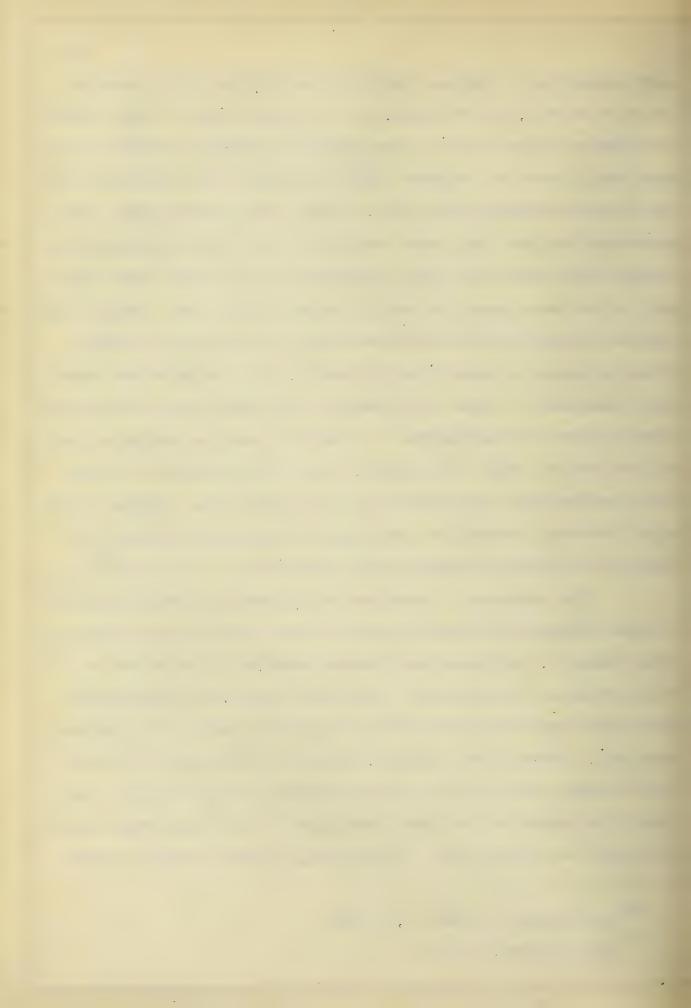


court concerning a sentence passed in accordance with a canon ... but that he will, nevertheless, out of respect for the king, saving the liberty of the church." The officer who sued on behalf of the king made a point of the fact that the clerks were confined in the lay prison at Durham rather than in the ecclesiastical gaol. The archbishop claimed that since the clerks were on an ecclesiastical mission they should have been delivered upon his order from a lay gaol in the same manner as from an ecclesiastical one. "And it was replied by the king that from this answer it was clear that the bishop intended to usurp royal authority, and judgment was thereupon pronounced." Later the archbishop was permitted to settle the case for four thousand marks. 17 In another case an ecclesiastical officer set the seals of the church upon the property of a clerk guilty of homicide thus preventing the coroner from performing his duty. In this instance the churchman was committed to gaol but there is no further mention of the disposition of his case. 18

The statutes of provisors and praemunire created quasicriminal offenses that were clearly without the limits of ecclesiastical immunity, and there are frequent records of instances in
which provisors were arrested. The best known case illustrating
this point arose two years after the death of Edward III: Edmund
Bromfield, a monk of St. Edmunds, obtained a provision to the office of abbot and built up a party of monks in his support. The
opposition headed by the prior complained to the king, who ordered
the arrest of the provisor. "That done, the said doctor convicte,

¹⁷ Rot. Claus. 20 Edw. I. p. 330.

¹⁸ Eyre of Kent, I, 97.



in that he entered into office without the consent of the king. and that he did this against the statute of 25 Edward III, he was sent to the Tower of London." The monks who had been his supporters were sent to divers monasteries to be strictly kept. A correspondence ensued between the pope and Richard II. and Bromfield was at last given his liberty through "the king's grace." Later in violation of the terms of his release he fled to Rome where he was given an office by the pope. 20 Actions for debt involving imprisonment were also withdrawn from the ecclesiastical immunity, though this seems to have been accomplished by gradual development. In 1300, Edward I directs the sheriff of London to release Ralph Rechel who is imprisoned at Newgate for the recognizance of a debt "since the king had learned that he was a clerk and a canon of the chapel of Shrewsbury, wherefore he ought to enjoy the privilege of the clergy."21 In the reign of Edward II Bishop Drokensford writes to the king: "By him through whom the king reigns .. Robert De Maunderville, clerk, et pro clerio habitus, having been imprisoned for debt at Newgate, London, contrary to the statute, we beseech your highness for his liberation."22 Half a century later the clergy seem to have lost their privilege completely for John Cameswell, parson of Beighton, is released from custody only after he has paid the archbishop of Canterbury the twenty marks due him. 23

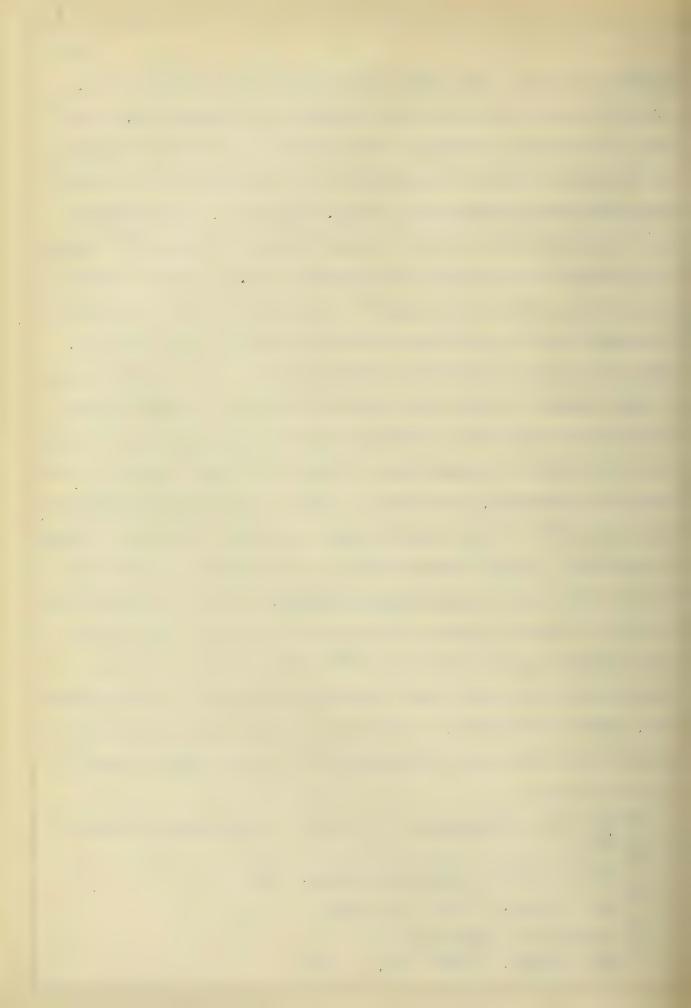
¹⁹ Ran. Hig., Polychron., VIII, 452. See Rot. Pat., 3 Rich. II. p. 420.

John Capgrave, Chronicle of Eng., 234.

²¹ Rot. Claus., 28 Edw. I, p. 333.

²² Drokensford, Register, 82.

²³ Rot. Claus., 46 Edw. III, p. 479.



This conclusion is affirmed by the decision of the doctors of theology, and of civil and canon law in 1377: they find that the privilege of the church does not extend to actions of debt or trespass
unless "the man be put in danger of life or member." 24

The examples of the excepted cases and of instances where the practice was unsettled mentioned above lead to the conclusion that it was only in cases of felony that benefit of clergy was allowed. That is to say, a clerk accused of homicide, robbery, burglary, theft, arson, or rape is to have his trial in ecclesiastical court. The crime of mayhem went through several stages before it became a felony in the proper sense of the term. In early English law the man who committed mayhem was liable to the same injury that he inflicted, but in the Plantagenet period the punishment was reduced to fine and possible imprisonment, the offense thus becoming a simple transgressio except when the mayhem was castration: in such cases it remained a felony. 25 In 1280 Guy Mortimer, rector of the church of Kingston, and one Thomas, a clerk, were in court appealed by William Joyce for beating him and cutting off his upper lip with a knife. The defendants pleaded that they were clerks. but it was held by the court that such a plea was invalid in a case of personal transgression and they were ordered to pay £100 damages

^{24 &}quot;Et auxint, coment q certains Doctours en Theologie de Canoun & de Civil aient este sur ce examinez & jurez devant le Roi mesmes a dire la plaine veritee de ce q lour ent sembloit de reson, & ent aient dit & determinez, eue sur ce meure & bone deliberation, Qe en cas dette, d'acompte, ne pur trespas fait, si homme n'y doit pdre vie ou membre, nully doit en Sainte Isglise avoir Immunite." Rot. Parl, III. 37.

²⁵ Blackstone, Commentaries, bk. IV, chap. XV, sec. 1.



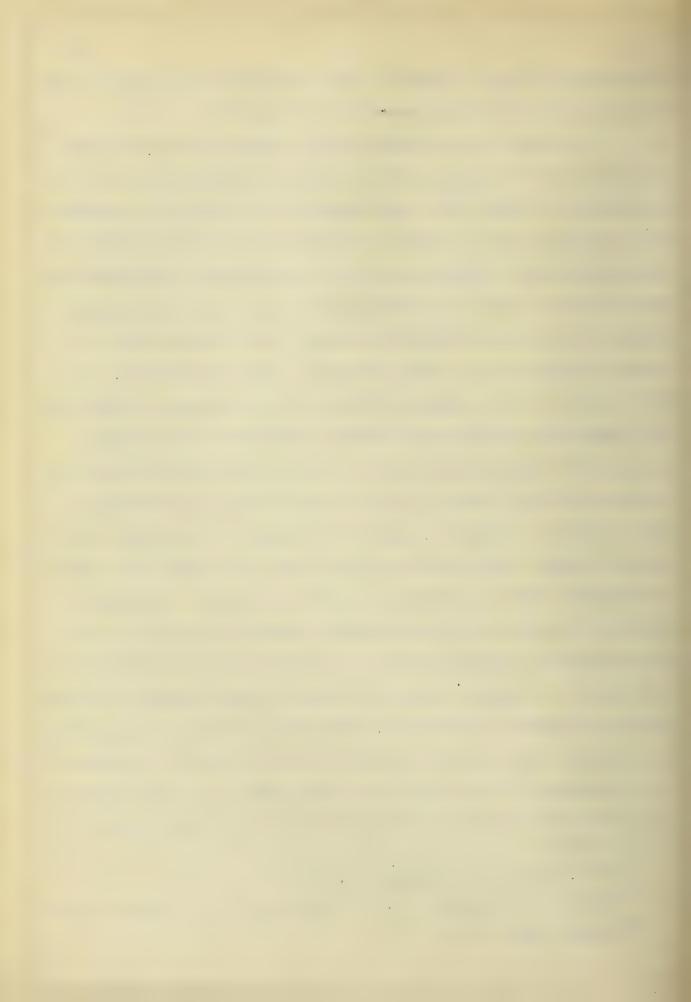
to the plaintiff and in addition were committed to gaol until they should pay a fine of twenty marks to the king. 26

It must be remembered that the church at this time retained the right to judge certain criminal and quasi-criminal actions that at a later date were recognized as within the competence of the secular courts. Perjury and false witness were adjudged in the ecclesiastical tribunals and the jurisdiction of the church extended over all manner of testamentary cases as well as over all arising out of the matrimonial relation. This latter class of causes included not only such matters as dower and divorce, but also included quasi-criminal matters such as bastardy and adultery. This right of the church was clearly recognized by the secular authorities 27 and the occasional attempts of temporal officials to interfere met with reproof from the king as well as resistance from the church. Edward I, upon the complaint of Archbishop Winchelsea, reminds the sheriff of London that "the church has among its liberties that no layman is permitted to take or imprison priests or clerks unless for something against our peace or our prohibition" and commands him to proclaim in the court of the Hustings that it is against the law of the land for watchmen to break into the "chambers of chaplains, these same chaplains being guilty of fornication and adultery (which manifestly cannot be corrected in a lay court)" and to order that such breaches be abstained from in the future. 28 Another instance in which the church claimed

²⁶ Hale, Pleas of the Crown, II, 325.

²⁷ Bracton, De Legibus, VI, 165; Britton, bk. I, chap. 5, sec.4

²⁸ Lieber Cust., I, 213.



especially in regard to papal bulls, but it was extended as far as possible by the churchmen. They do not appear to have been successful in their pretensions in any case, however, for there are records showing that the regular processes were followed even in the cases of forgers of papal bulls. 30

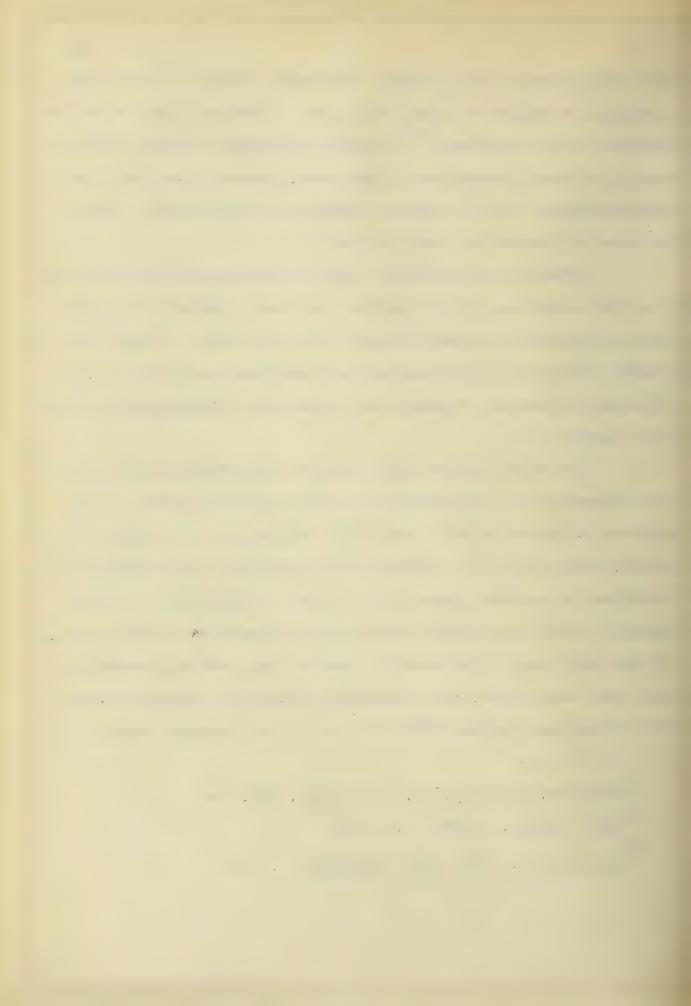
After this very general view of the position of the clergy in the operation of the criminal law there remains to be considered the procedure in cases wherein clerks accused of crime were brought before the courts secular and ecclesiastical; that is, the operation of benefit of clergy as it existed in England during the middle ages.

lar officers and brought before the court in their charge. The churchmen objected to this very first step saying that unless the accused was taken in the very act of committing a grave crime he should not be arrested save by the order of the church. Their demands in this matter were never given recognition by the state, but had they been, it is doubtful whether any secular proceedings would have been taken, for the church appears to have been assiduous in keeping clerical offenders out of the temporal courts. It

²⁹ Wilkins, Concilia, II, 116; ibid., III, 94.

³⁰ Rot. Claus., 25 Edw. I, p. 56.

Ann. Burt., 1258 (Luard, Annales, I, 258).



seems probable that one of the reasons why so few monks in comparison with the number of priests, appear upon the rolls of the criminal courts was because the seclusion of the abbeys prevented their minor offenses from becoming known. 32

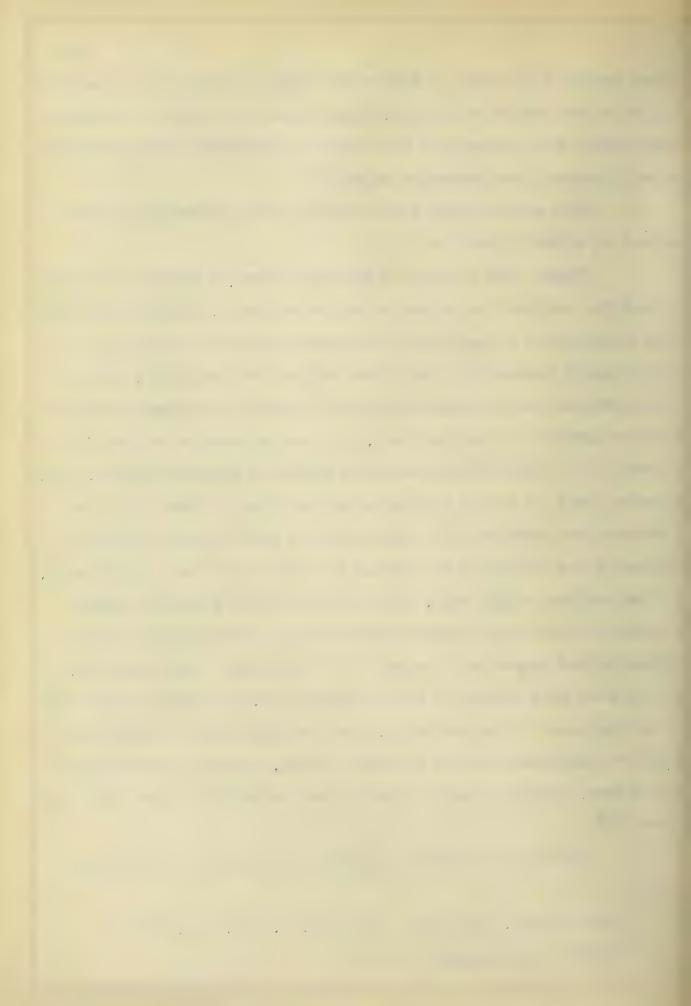
The earliest and best account of the proceedings after arrest is given by Bracton:

"When then a clerk of whatever order or dignity, has been seized for the death of a man or any other crime, and has been cast into prison, and an application has been made in the court of Christianity respecting him by the ordinary of the place, such as the archbishop or the bishop or their official, or others exhibiting the letters of the aforesaid, let the prisoner be at once delivered up to them without any inquisition to be made thereon, not, however, that he should be altogether set free so that he may wander about the country, but that he may be kept in safe custody either in the prison of the bishop himself, or of the king himself, if the ordinary wills this, until he shall have properly purged himself of the charge brought against him, or have failed in his purgation and thereupon he ought to be degraded. And therefore. as has been said above, if he is applied for, let him be delivered up to the court of Christianity, for the king shall not have the right to imprison him whom he cannot judge, neither can he degrade the clergy, since he cannot promote them to orders as has been said above."33

At the time when this method of procedure was followed

³² Thos. Wals., Gest. Ab. St. Alb., I, 108, 221, 448.

Bracton, De Legibus, II, 299.

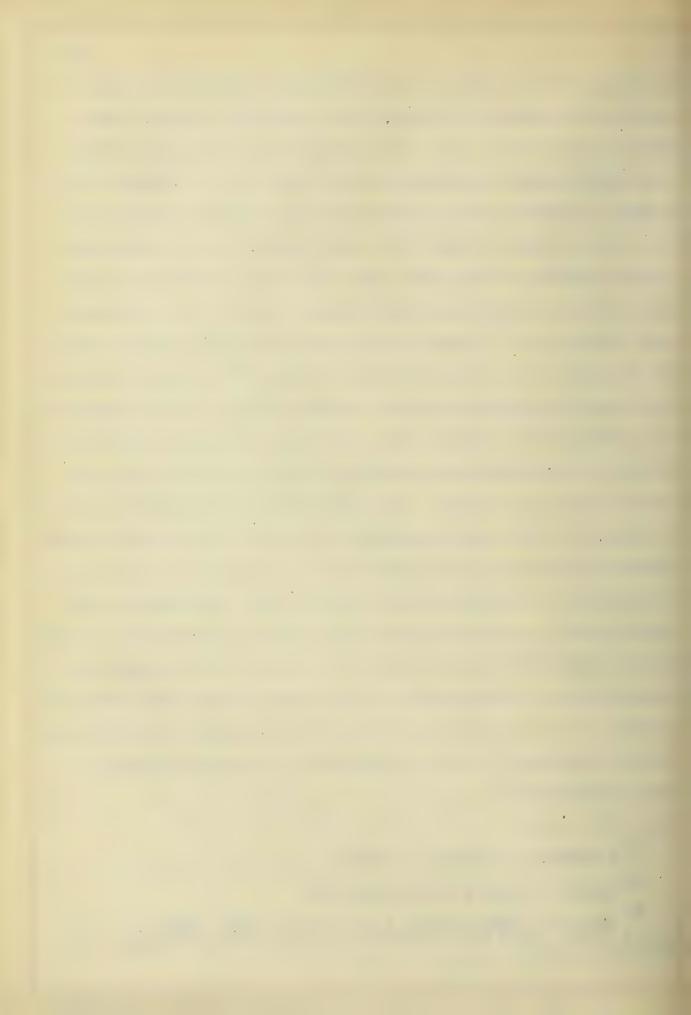


the visits of the justices were infrequent; therefore the man arrested on the charge of felony, if not admitted to bail, often waited a long time in gaol before justice was done. Concerning this Bracton says that persons who are arrested for felony should be kept in prison unless an order for bail is issued, "but it is to be seen in whose prison they ought remain, when they have been seized according as they have been seized for the robbery or the death of a man or for some other felony. And it is to be known that they are not to remain in the prison of anyone except of him who can judge such persons in his own court."34 It was in accordance with the principle that the ordinary usually made a demand for the custody of the accused clerk until the time when a formal assertion of ecclesiastical jurisdiction could be made before the court of the king's judges. The clerk was then delivered to the claimant, but the latter was obliged to give security that he would produce the accused at the proper time. In a case in 1221 the "coroners and the county record that the abbot undertook in full county [court] to have him before the justices under penalty of one hundred marks."35 The cartulary of St. Mary's Abbey contains an account of a similar delivery; in this case the abbot was given the custody of several of his monks who had been accused of murder upon "giving ten pounds for their appearance by N. Taf and Hugo le Crues, sureties."36

³⁴ Bracton, De Legibus, II, 291.

³⁵ Select Pleas of the Crown, 103.

³⁶ Cart. St. Mary's Abbey, I, 2; see also Rot. Claus., 30 Hen. III, p. 449. There is no mention of penalty in Rot. Claus., 10 Edw. III, p. 155.

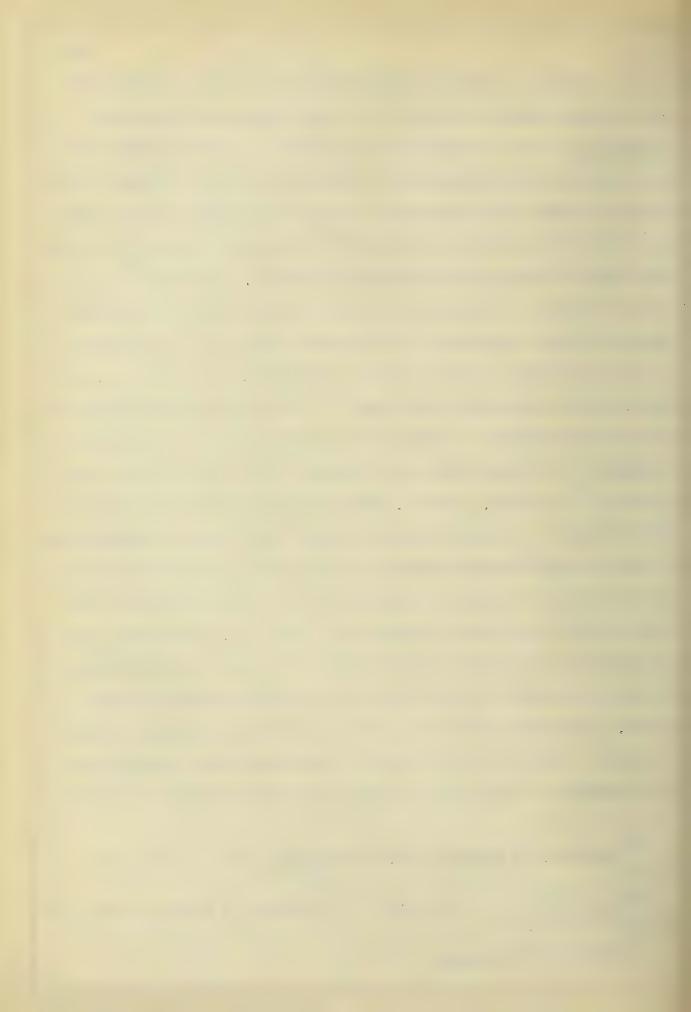


There was always the possibility that the accused clerk would escape immediate arrest. If this happened in a case of transgressio he was summoned by the sheriff or the bailiffs and if he did not make his appearance in court an order was issued to the bishop to compel his appearance. If the bishop did not act upon the order of the justices he might be distrained, provided that the clerk had no chattels which might be seized by the king. 37 cases of felony the clerk, who did not appear after the customary summons had been repeated in four county courts, was outlawed as though he had been a layman, and his chattels, if he had any, were seized by the officers of the king. 38 If he was captured later on, Bracton believed that he should be delivered to the ordinary for a "judgment of outlawry made in a temporal court will not bind such persons."39 He adds, however, that if an outlawed clerk fails to purge himself no sentence shall be passed save that of degradation. In 1342 a contest arose between the king and Bishop Grandisson because of the activities of certain secular officials who, in the words of the prelate had "invaded the liberties, privileges, and immunities of the church and molested and injured ecclesiastical persons in contempt of the fear of God and the respect of the church, having banished or as they use the term outlawed" certain churchmen. The alleged violators of ecclesiastical liberty were undersheriffs of the county of Devon, and when sentence of excom-

³⁷ Bracton, De Legibus, VI, 493, 499; Britton, bk. I, chap. 27, sec. 10.

An instance of the process of outlawry is given in Rot. Pat. 16 Edw. III, p. 472.

³⁹ Bracton, De Legibus, II, 383.

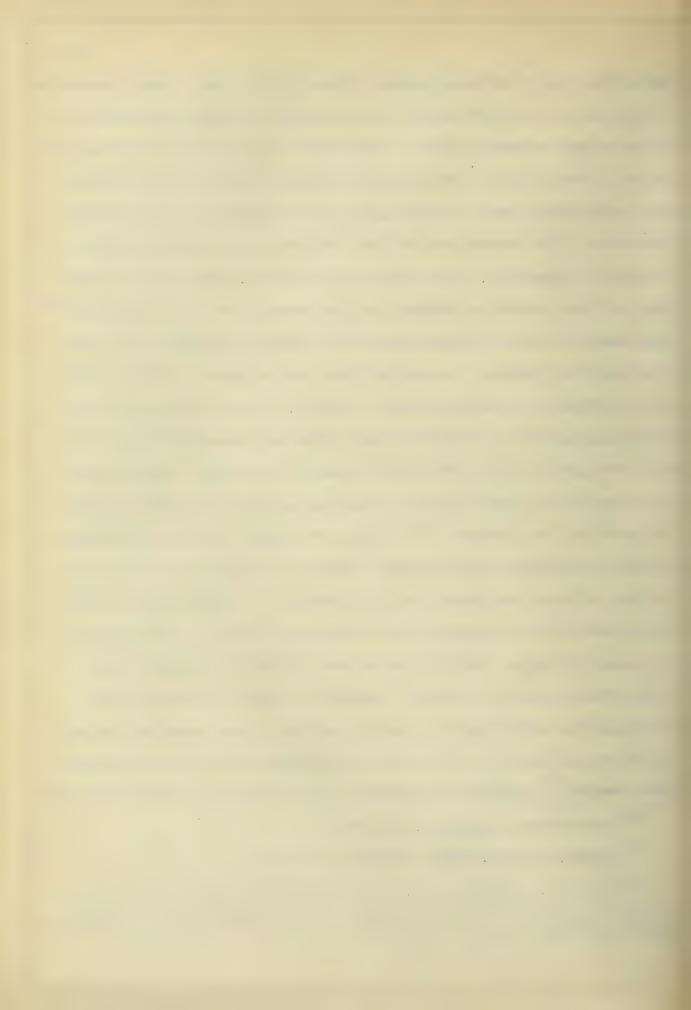


munication was pronounced against them they at once made submission, at the same time shifting the blame to an itinerant justice who in his turn was excommunicated. The justice appealed to the king who issued a prohibition; but the bishop carried his case to convocation, which was then in session, and won the support of Archbishop Stratford. The matter was at last settled by the arbitration of the Earl of Cornwall, who as the king's agent, remitted the outlawry of the clerks in return for the absolution of the justice. Sometimes the clerk avoided arrest by seeking sanctuary and later abjuring the kingdom. A case of this kind appears in 1256: William de Nobel, a clerk accused of murder. "fled to the church of Corebrigge and there admitted this crime and [also] admitted that he was a wrongdoer in his own country and a receiver of thieves and other wrongdoers and because of this he abjured the realm before the court of the coroner."41 It was customary that the criminals who took sanctuary should remain therein for forty days, and at the end of that time make their abjuration. It appears that the church was not willing that this procedure should be followed in the case of clerks: in 1316 Archbishop Reynolds complains that clerks were forced to abjure. Edward II agreed to remedy this grievance but only upon the condition that clerks abandon their sanctuary and submit to the usual procedure in the case of criminous clerks. 42 Sometimes, however, this attitude of the church was

⁴⁰ Grandisson, Register, 961-968.

⁴¹ North, Assize Roll, 40 Hen. III, p. 76.

⁴² Wilkins, Concilia, II, 461. Bracton says that it is not an irregularity for a bishop to expel a criminous clerk from sanctuary. De Legibus, II, 357; VI, 499. It is unlikely that a churchman would have taken such a step.

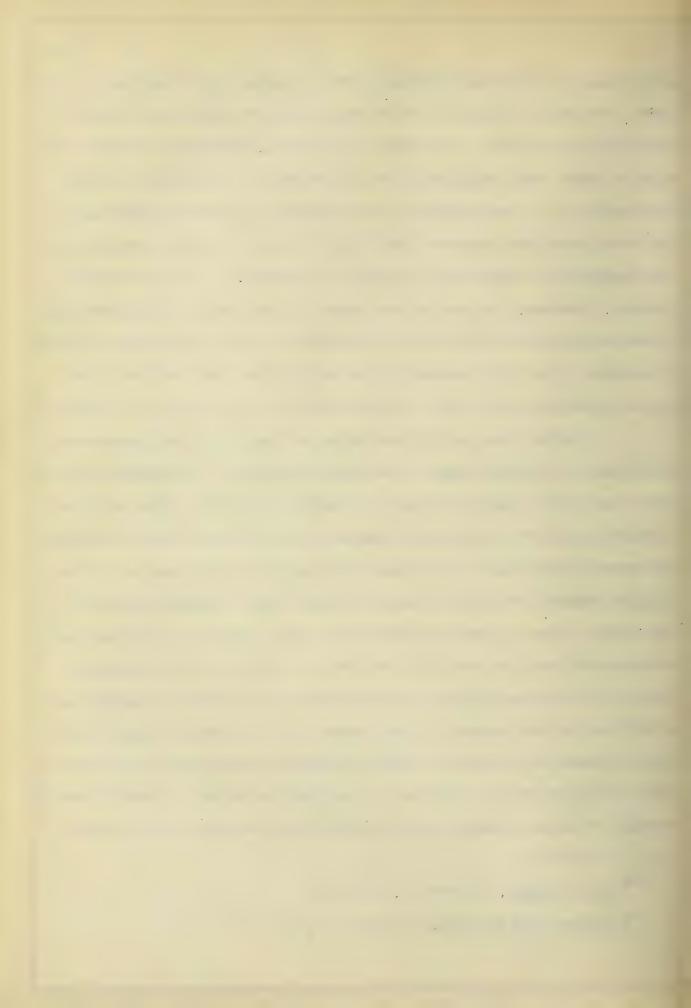


not in accord with the desires of the persons most concerned. In 1286 a thieving chaplain fled to sanctuary and expressed himself as willing to abjure; the bishop of Lincoln, however, besought the king to cause the chaplain to be delivered to him without making abjuration. In the meanwhile the forty days allowed elapsed, and the king therefore granted the bishop's request on the ground that the chaplain no longer had a right to protection. His sense of justice, however, led him to add that if the royal council saw fit he would order that the clerk be returned to the church and allowed to abjure if he still wished to do so. 43 The goods of the clerk who abjured were forfeited to the king as in the case of outlawry. 44

Before the end of the reign of Henry III the procedure described by Bracton began to undergo a process of alteration which continued until the abolition of benefit of clergy. The principal responsibility for the early changes rests with the royal justices who were working out the system of precedents that came to be the English common law; but it must be added that certain actions of the clergy made it possible for the secular justices to place new interpretations upon existing customs and to find novel explanations for the provisions of the statute law. Within a century and a half variations appear in the tests of clergy, a large number of technical exceptions arise, and the character of the delivery of a clerk to his ordinary is entirely altered. A satisfactory account of these changes requires that each be dealt with separ-

⁴³ Rot. Claus., 14 Edw. I. p. 399.

⁴⁴ North. Assize Roll, 40 Hen. III, p. 76.



ately; but before this is done it is necessary to know exactly to what persons the rules of benefit of clergy were held to apply.

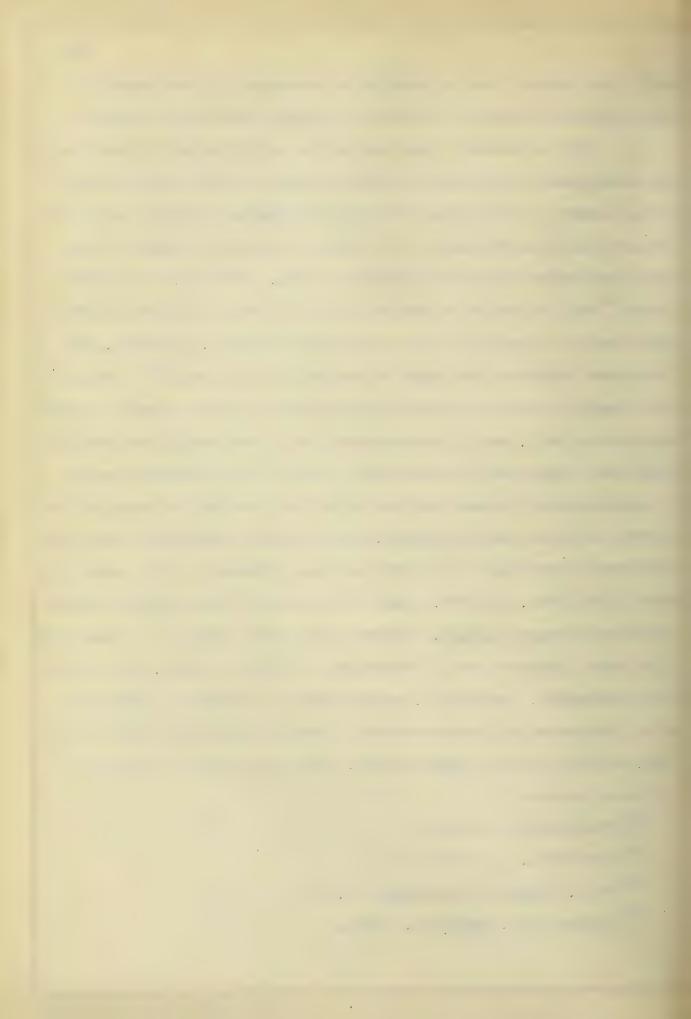
It is probable that during the early period of continental development only those in sacred orders enjoyed the privilege of the clergy. But by the time when the English records begin the immunity has been extended to include all those in orders of any sort: the Becket historians mention a dean, a priest, and several clerks and the rolls of assize during the reign of John and the early years of Henry III show chaplains [priests], acolytes, and subdeacons claiming the right to ecclesiastical trial. 46 The privilege was not limited to the secular clergy but was allowed to the regulars as well, and it is asserted that a nun would have been allowed her clergy had the need ever arisen. 47 The largest number of churchmen who became involved with the criminal law were not in orders, but were simple clerici, who bore the tonsure but were not entitled to minister until they had been advanced to the lower orders. They were, however, qualified to assist the priests in the capacity of aquae bajulus, bearers of the holy water. 48 Concerning this class Lyndwood says: "There are but seven orders, that is to say hostitarius, lectoratus, exorcistatus acolythatus, subdiaconatus, diaconatus et presbyteratus. Thence according to this, tonsure, which is called psalmistatus, is not an order but only a

⁴⁵ See above, p. 54-55.

⁴⁶ See above, p. 87-88,99.

⁴⁷ Hale, Pleas of the Crown, II, 371.

⁴⁸ Drokensford, Register, XXXIX.



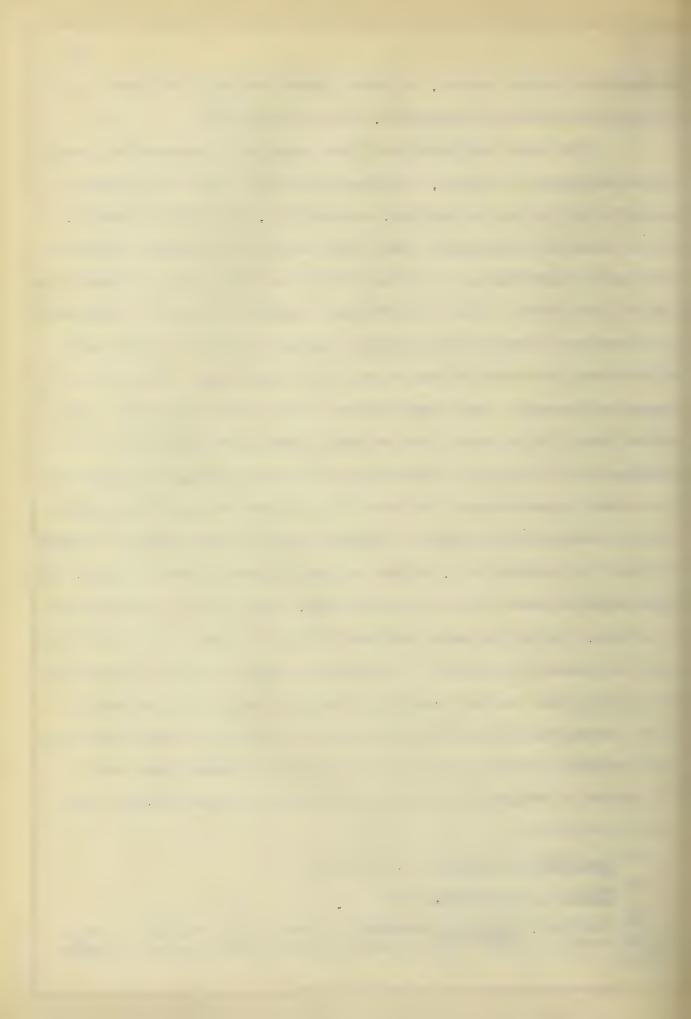
disposition toward orders, so also bishop according to this is not an order according to sacrament, but a dignity."49

Of those who took the first tonsure a comparatively small number advanced in orders, the great majority turned to secular pursuits and served as scribes, accountants, bailiffs of manors, and in similar occupations where they could use whatever learning they had to advantage. The close rolls show that many of them were men of considerable local importance: several knights are mentioned as clerks and there is one recorded instance wherein a criminous sheriff was delivered to the bishop as a churchman. This class became so numerous that legal writers took notice of them. Horne states that "it is abuse that so many clerks are suffered to be ordained that the king's jurisdiction is diminished."50 That this was a real grievance may be proved by a glance through the registers of the English bishops. Between 1395 and 1419 Bishop Stafford granted the tonsure to 2.583 men in the diocese of Exeter alone. The same register bears out the other point, that they did not advance in orders, for in the same territory during the same time only 941 took the order of acolyte. 51 In the same way it may be shown that the clerici made up the principal class of ecclesiastical criminals. Among the letters to the barons of exchequer and to the various sheriffs during the reigns of the three Edwards are over 225 orders to return the property of clerks who have purged them-

⁴⁹ Memorials of Ripon, II, 21 note.

Mirror of Justices, 171.

Stafford, Register, 428-443. There is a possibility of a slight error in these totals because of the large number of names counted.



selves of crime before the courts of their ordinaries. Of this number less than five per cent are designated as priests, chaplains, or vicars, the rest are clerks. 52

That the right of the lower clergy to enjoy benefit of clergy was not always admitted by the secular judges is proved by the long series of complaints issued by the councils and which were only brought to an end by the statute <u>Pro Clero</u> of Edward III, which gave the approval of the state to the delivery of all churchmen of whatever grade to the ecclesiastical tribunals. 53

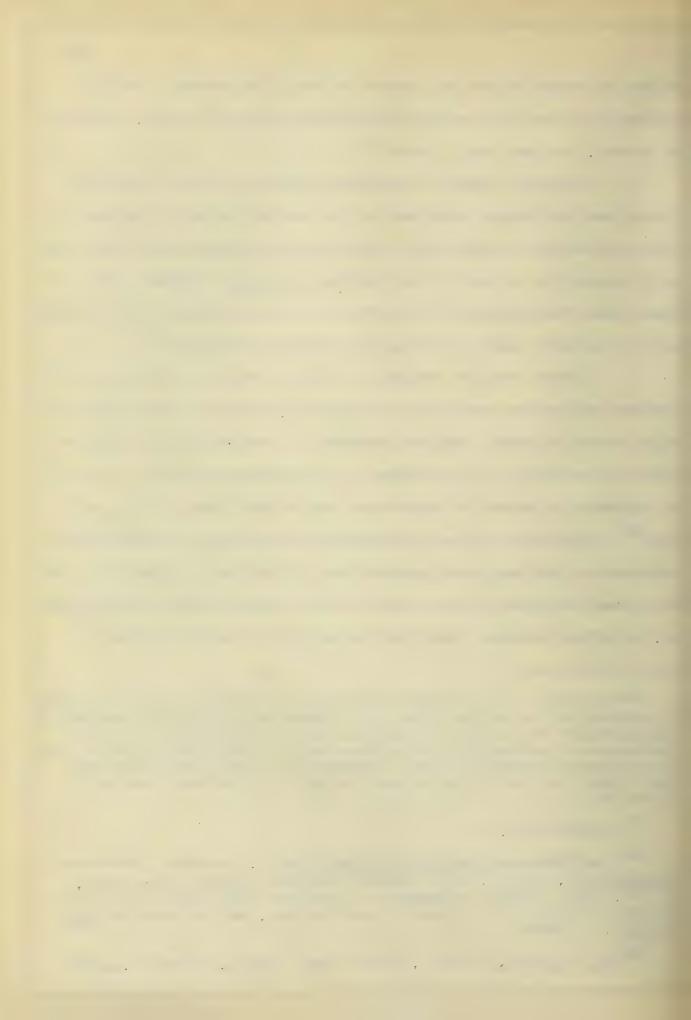
There were two methods by which a criminal cause could be brought before the law courts of medieval England: one individual might bring an appeal against another; or the accusation might be made in the form of a presentment by the representatives of several hundreds in answer to questions laid before them by the justices. The arrest of the accused might come before or after the information had been made against him. If he was a clerk he might be either delivered to the prison of his ordinary for safe keeping or, as often happened, admitted to bail while awaiting trial.

⁵² This may not be entirely fair as it appears to be the custom to mention all below the order of a deacon as a clerk or "member of the church." It should be mentioned in this connection that the prevalence of ecclesiastical crime cannot be adequately judged from the evidence offered in these documents for the court rolls show that almost half of those brought before the justices "had no chattels."

^{53 25} Edw. III, 3.

⁵⁴ See Stephens, English Criminal Law, I, 244-255; Blackstone, Commentaries, bk. IV, chap. XXXII; Hawkins, Pleas of the Crown, bk. II, chap. 23-25. An example of the questions which were given to the justices in the form of instructions, may be seen in Eyre 6f Kent, I, 28-46.

⁵⁵ Rot. Claus., 15 Edw. I, p. 454; Rot. Claus., 16 Edw. I, p. 507.



When the time came for his appearance before the king's justices several courses were open to him. 56 He might submit to the decision of a jury -- a proceeding which was encouraged by Edward I and his grandson, 57 he might plead a previous conviction or acquittal. be exhibit a pardon, turn approver, or answer that he was a clerk and therefore should not plead in a secular court. The first alternative meant that he would "put himself upon his country for good or ill: " if he pleaded previous judgment or pardon and could prove the truth of his claim he was released from custody. If he became an approver, however, the case was not so simple for he admitted his own guilt thereby and also offered to prove with his body that certain persons whom he appealed as fellow criminals were equally culpable. This latter proceeding could not have been of any especial value to the accused clerk, save for the promise of a pardon if he successfully prosecuted his appeals. 59 In the cases of this kind which are recorded the churchman who became an approver would refuse to pursue his appeal and would be delivered to the ordinary as a clerk convict under the same disabilities as one who was convicted upon inquest. 60

By far the greater number of accused clerks chose the

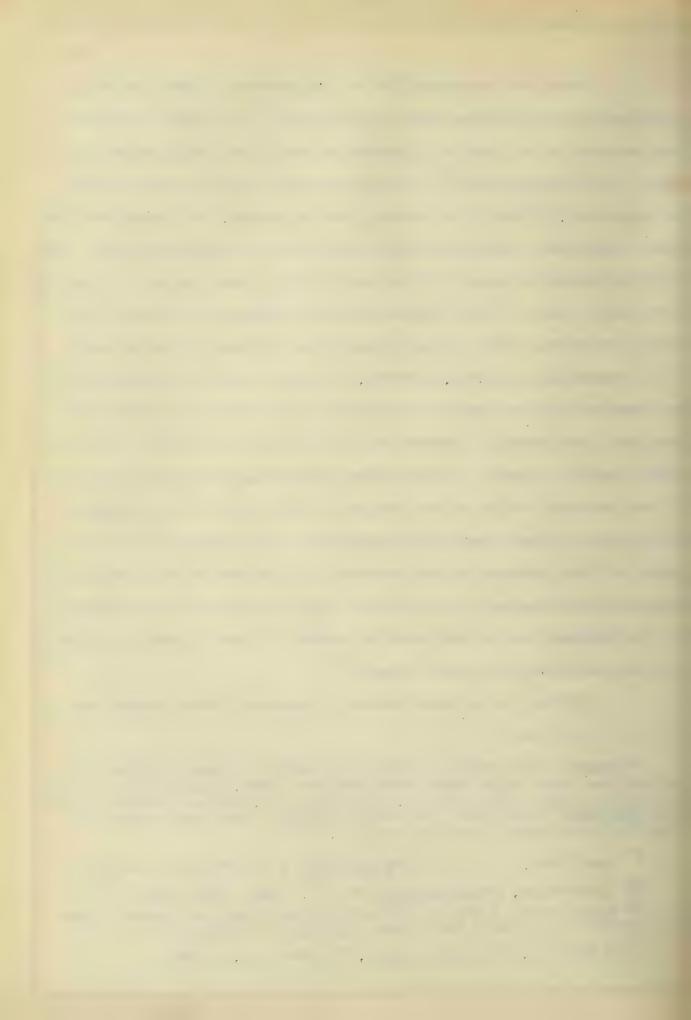
before the court with bare heads and bare feet, clad only in a tunic. Ann. Lond., 1309 (Stubbs, Chronicles, I, 166). A clerk in Kent was presented before the justices in irons; they were removed by order of the court. Eyre of Kent, I, 81.

⁵⁷ See above, p. 122; also Rot. Pat., 17 Edw. III, p. 124.

⁵⁸ Blackstone, Commentaries, bk. IV, chap. XXVI, sec. 4.

⁵⁹ Horne said it was an abuse to allow clerks to become approvers because they could not fight. Mirror of Justices, 137.

^{60 9} Edw. II, 16; Rot. Claus., 22 Edw. III, p. 460.

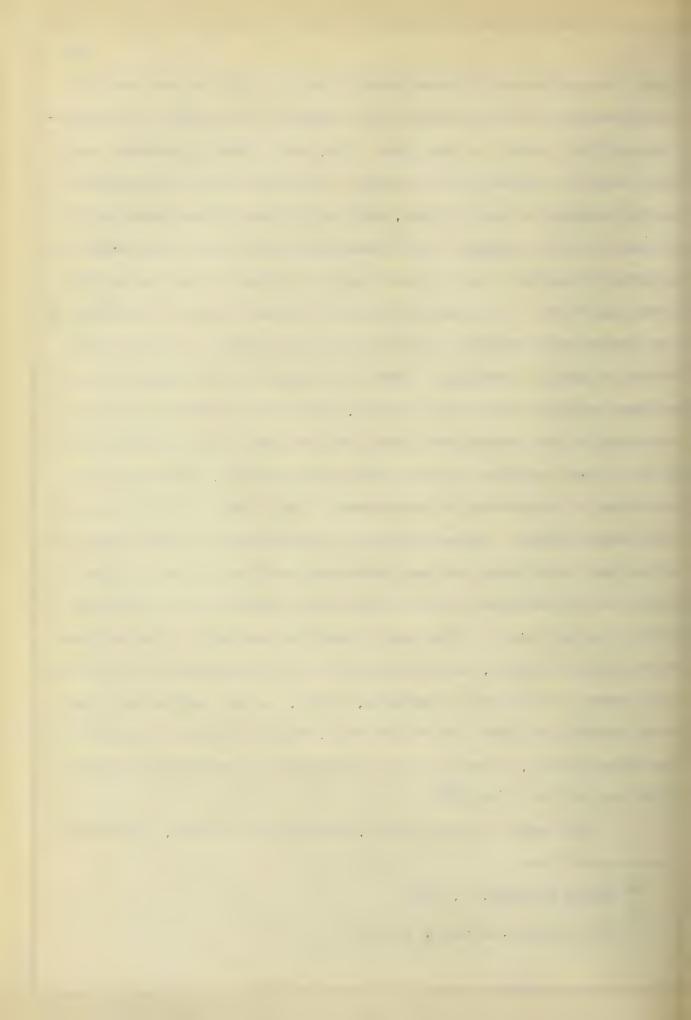


last alternative and pleaded their clergy. If this was done it was necessary for the prisoner to establish his right to the privilege of the church in some way. The most common procedure was what might be called double claim. The accused said he could not answer because he was a clerk, and the ordinary then demanded him on behalf of the church. The demand was made orally but behind its apparent simplicity lay a great deal of formality and not a few technicalities. In a general way the ordinary may be described as the person who exercised the highest jurisdiction of the church within a certain locality. Thus the bishop had cognizance of all matters arising within his diocese, but he was subject to the jurisdiction of the archbishop over the province. To the authority of the bishop and that of the archbishop as well, there was one exception of considerable importance: the rights of the abbots of the exempt abbeys. These men had a jurisdiction in their own liberties and over their own men which was similar to that of the bishop in his diocese and the latter was forbidden to interfere with it in any way. 61 They were therefore ordinaries in the same sense as the bishops, and their position was recognized by the secular power: "William de Warbonne, clerk, .. has purged his innocence before the abbot of Westminster, who is subject directly to the Roman Church, to whom he was delivered in accordance with the privilege of the clergy."62

The court rolls speak continually of vicars, chaplains,

⁶¹ Papal Letters. I. 205.

⁶² Rot. Claus., 34 Edw. I.p. 405.



deans, archdeacons, and officials as ordinaries, 63 who appeared to claim clerks accused before secular judges: these men however did not make their demands in their own right but as representatives of the bishop or the abbot. 64 Shortly before the arrival of the justices in a certain locality the ordinary of that jurisdiction would issue a commission to any churchman or churchmen of his choice to act in his stead in the claiming and receiving of clerks who were charged with crime before the secular courts. The commissaries were usually instructed to claim and receive "whatever clerks may be condemned for any crime before the court of the king's justices or any secular court whatsoever, within our diocese. " and to deliver them to the court of the church according to the custom of the realm and of the church and in keeping with the liberty and privilege of the clerical orders. 65 There was a variation in this form in some instances: the particular court before which the commissary was to appear was occasionally mentioned 66 and sometimes the names of the justices or the place of the session was given. 67 On rare occasions, apparently in cases in which the church took a

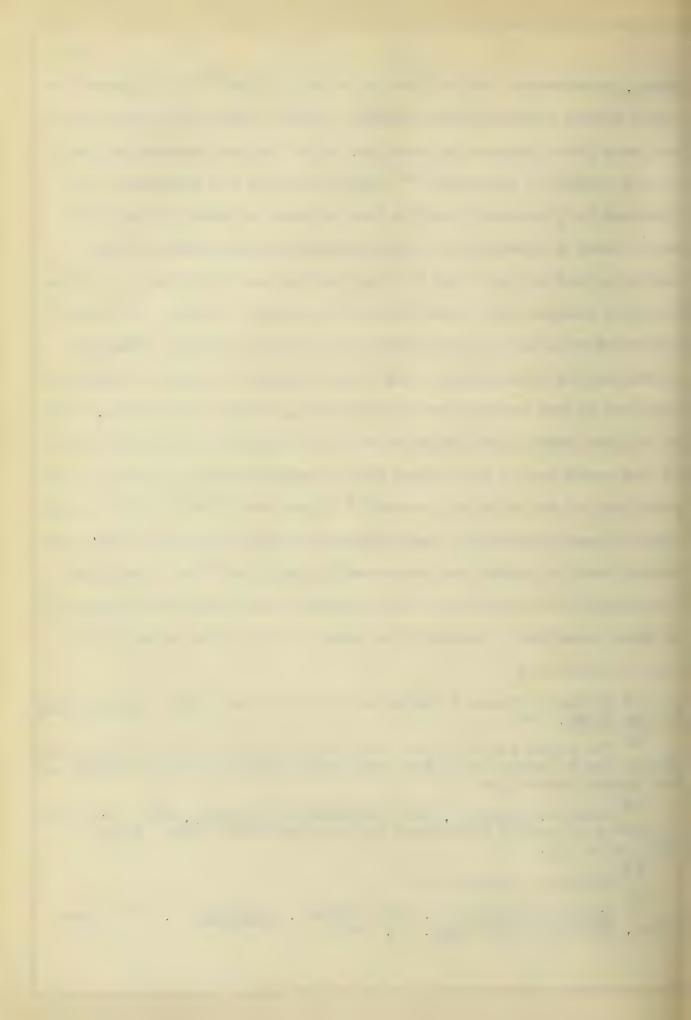
of the Crown, 189.

⁶⁴ The close rolls ignore the officers who actually administered the law by saying that the clerk was delivered to the bishop and was purged before him.

⁶⁵ Salopia, Register, 298; Grandisson, Register, 397. The bishop bore the expense contracted by these commissioners. Reg. Pal. Dun., III, 512.

⁶⁶ Salopia, Register, 756.

Beverly Minster, II, 325; Giffard, Register, I, 188; Thos. Wals., Gest. Ab. St. Alb., II, 245.



particular interest, commissions were appointed for the purpose of receiving either certain persons or those guilty of particular offenses. The majority of the commissions carried with them the power to enforce their demands by canonical censure. The commissaries carried with them letters addressed either in general terms, or sometimes to the "noble and discreet men," the justices, signifying their appointment over the seal of the ordinary.

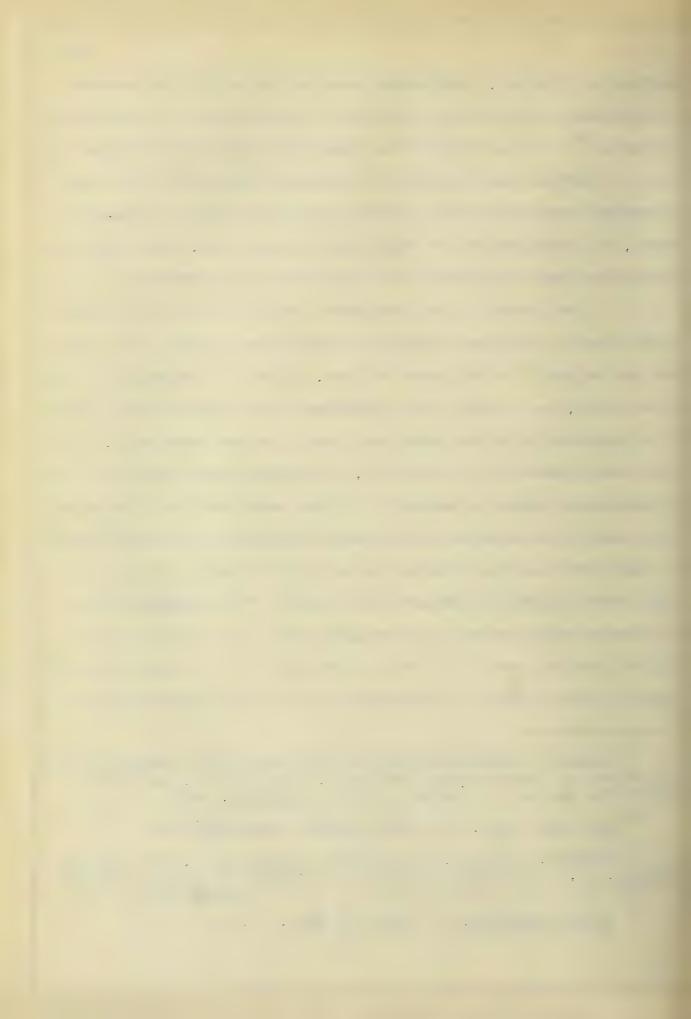
that he was a clerk was accepted as sufficient proof by the justices and he would be delivered to them, subject to exceptions to be noted later, to be dealt with according to the laws of the church. If it appeared after delivery that the claim had been false, and that the prisoner was not a clerk, the ordinary was liable and his temporalities might be seized. It may have been for this reason that some of the commissions included directions to the appointee to take care that the prisoner had a right to the privilege. In 1361 Bishop Salopia of Bath and Wells wrote: "We commission you... to examine such clerks as are brought before the court of the king's justices next to be held at Somertone in our diocese and in case by their letters of ordination or by other legitimate means

⁶⁸ Peckham's commission for the murderers of the precentor of the church of Exeter names John Pycot, dean of York, and eleven others who are to be claimed. Quivil, Register, 443.

⁶⁹ Reg. Pal. Dun., III, 324; Peckham, Register, 443.

Wykeham, Register, 231; Giffard, Register, I, 188; Beverly Minster, II, 139. If the commissaries ventured to claim a man and did not have their letters they went to gaol. Britton, bk.1, chap.5, sec. 5.

⁷¹ Liber Assisarum, 122; Eyre of Kent, II, 86.



they are found to be clerks, not bigamous, and in possession of clerical life and clerical privilege to petition for them and to receive them into your care."72

These instructions give the key to what were considered the tests of clergy both by the church and by the state. If the ordinary appeared the claim of the prisoner was left to his decision: in case he did not it was for the justices to decide whether or not the prisoner should be held to await the appearance of the ordinary. 73 In such instances the visible evidences of clergy were of greatest importance and the foremost of these was tonsure and habit. From almost the beginning of the English church the councils had enjoined distinctive dress 74 upon the clergy and its absence sometimes led to grievous consequences to the accused. 75 On the other hand laymen often realized the particular advantages to be gained from clerical appearance and illegally assumed the tonsure. The demands of the churchmen concerning their judicial immunities constantly made a point of the fact that habit and tonsure were to be accepted as proof of clergy; but their complaints show that such evidence was not always accepted as conclusive. But even though clerical dress might not be considered as absolute proof of clergy it is certain that before 1350 clerks who could exhibit this evidence were more likely to be treated with consider-

⁷² Salopia, Register, 756.

⁷³ Rot. Claus., 12 Edw. III, p. 324; Year Book, 11 and 12 Edw. III, 599 (Roll Series).

⁷⁴ Wilkins, Concilia, I, 652; Mon. Fran., II, 89.

⁷⁵ Select Pleas of the Crown, 129. Note the objections to malicious shaving above, p. 106.

⁷⁶ Select Pleas of the Crown, 19.



ation by the justices than those who asserted their right to the privilege without such apparent evidence. 77

Letters of ordination were another means of proving the right to the privilege of the church. 78 It was not always accepted as sufficient. 79 as is shown by the case of John Knelle; but if the justices were disposed to limit ecclesiastical immunity the absence of such letters was one of the grounds upon which they might do so . One of the earliest court rolls shows that Hugh Hoppeoverhumbr' is claimed by the official of Canterbury but is remitted to prison to be held until the archbishop's letters testifying to his ordination are produced. 80 Two hundred years later a certain Robert was arraigned for robbery. "He said that he was a clerk and could not answer without his ordinaries. The justices must ask the ordinary who claims him where he was ordained, and if he have the letter of orders, notwithstanding that the ordinary claims him."81 The production of actual letters was not necessary, but in lieu of them a certificate from the bishop that the person in question had proved that he had been ordained might be demanded. 82

From the materials presented above it appears that only a claim of clergy, supported by habitum et tonsuram clericalem, let ters of ordination, and the claim of the ordinary was valid, if the

⁷⁷ In state trials this was not always true. See the Weyland and Bussey cases above, p. 123, 98.

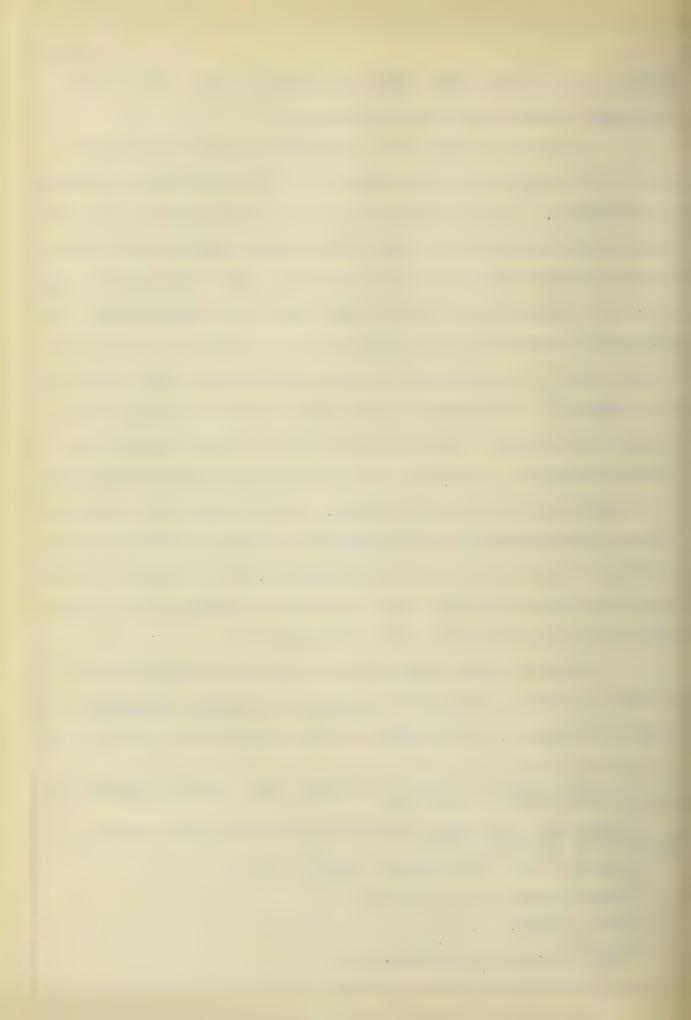
⁷⁸Clerks who lost their letters frequently had them renewed. Drokensford, Register, 162.

⁷⁹ See the case of John Knelle above, p. 124.

⁸⁰ Select Pleas of the Crown, 97.

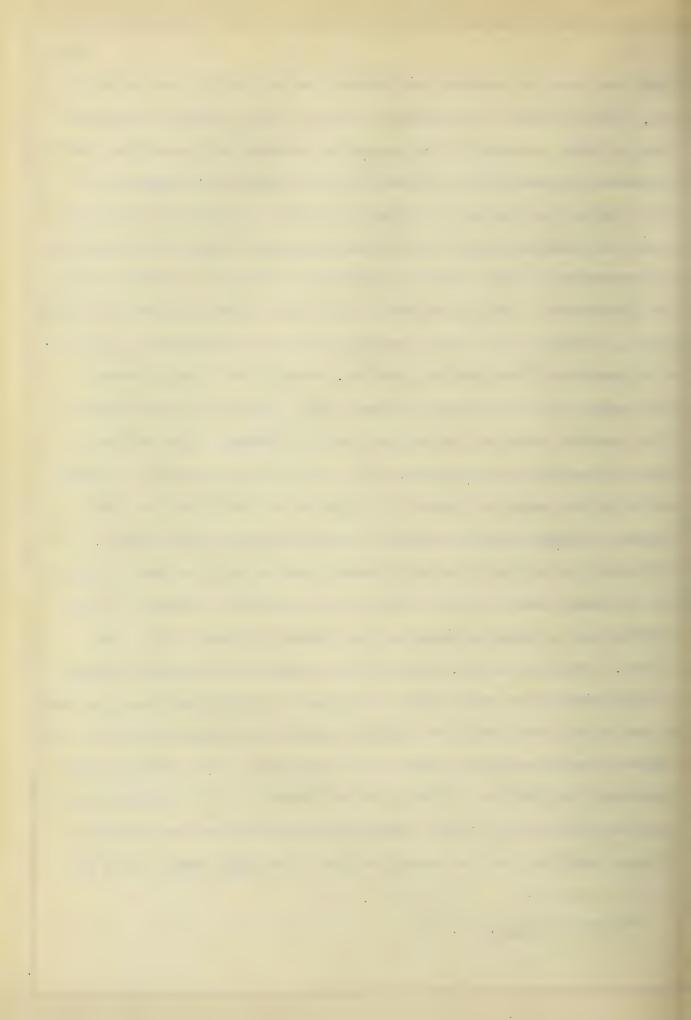
⁸¹ Eyre of Kent, II, 149.

⁸² Select Pleas of the Crown, 121.



justices chose to enforce the common law to the fullest extent. But, just as some of the judges gave the law a strict interpretation, others inclined to the opposite extreme and placed as few impediments as possible in the way of the clerk who demanded the privilege of the church. It was this class of justices who introduced the reading test, which became the most essential feature in the operation of the rules of benefit of clergy at a later period. The importance of the introduction of this method of proving clergy lies in the fact that when accepted as the sole test of a prisoner's exemption from secular justice, benefit of clergy became a privilege of the individual rather than a liberty of the church. This practice grew up during the reign of Edward I and seems to have won general recognition by the time of his grandson. A case early in the reign of Edward II illustrates the practice: when Thomas of Sarre was indicted for the poisoning of his father. "he was asked how he would acquit himself and he said he was a clerk. The ordinary handed him the Book and he read two verses."83 An interesting instance appears in the reign of Edward III: two clerks, John and Thomas, who had put themselves upon the country and had been found guilty were being led to execution when the commissaries of the bishop of Lincoln interfered saying that the condemned were notoriously known to be churchmen. The execution was suspended and the two clerks were delivered to the commissaries awaiting the action of the king on the petition of the bishop of Lincoln that they be delivered to him. The king sent down a writ

⁸³ Eyre of Kent, I, 151.



to the justices of gaol delivery "that if by due examination they are found to be clerks" the two prisoners are to be allowed to use and enjoy the privilege of the holy church, since ministers of the church have besought the king that John and Thomas now in the commissaries' custody may be examined in letters. 84 Before the end of the century the register of Bishop Grandisson of Exeter shows that John Shirewynde, literatus, is to be allowed to purge himself of the charge of horse-stealing. 85

The reading test must have been considered strong evidence of clergy by the middle of the reign of Edward III, for the justices among other things are instructed to learn what gaolers have taught their prisoners letters so that they might claim the advantage of the common law. But reading was not always accepted as a sufficient proof of clergy, for by the dictum of a justice in 1357 literatura non facit Clericum, nisi haberet sacram tonsuram. 87

According to the practice in Bracton's day the clerk who proved his clergy was at once admitted to the privilege of the church and delivered to the ordinary; but by the end of the reign of Henry III this procedure had been altered. 88 The clerk still establishes his clergy but before he is delivered an inquest will

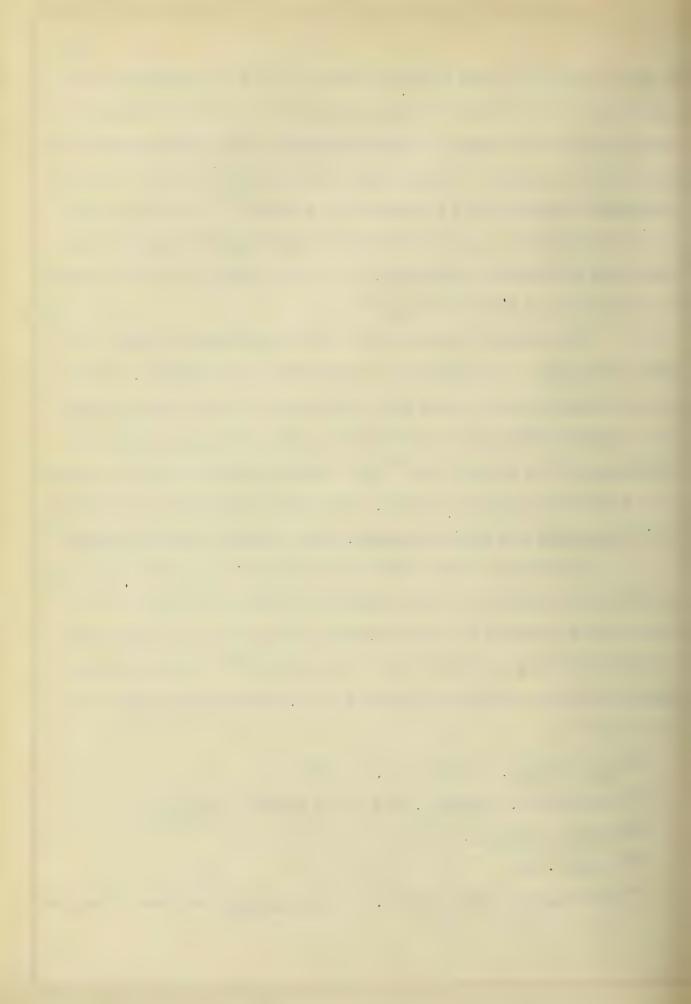
⁸⁴ Rot. Claus., 16 Edw. III, p. 650.

⁸⁵ Grandisson, Register, 453. Also Wykeham, Register, II, 463.

⁸⁶ Liber Assisarum, 138.

⁸⁷ Ibid., 122.

⁸⁸ Coke says by Stat. West., I. Institutes, 2nd institute, 164.



be taken ex-officio to determine whether he is innocent or guilty.89 A Northumberland assize roll of 1256 gives the process in detail: Margery appeals Richard for the death of William, her husband; Richard appears and pleads his clergy and is claimed by the official of the bishop of Durham: "And that it be known how [in what character] he was liberated let the matter be inquired into by the country. And the jurors say upon their oaths that Richard was the bailiff of William de Valence and he took the said William for a certain amercement, and that as soon as the fine was paid he permitted him to go and they say precisely that he did not wound or imprison him. Therefore he is acquit and let the aforesaid Margery be held. And he [Richard] may prosecute her for a gossip." 90 Again a Woman appeals a clerk for the death of her sister and he is demanded as a clerk "sit ut sciatur qualiter ei liberatur, inquiratur rei veritas per patriam and the jurors say upon oath that he is not guilty. Ideo quietus."91 If this was the verdict the prisoner was set at liberty. 92

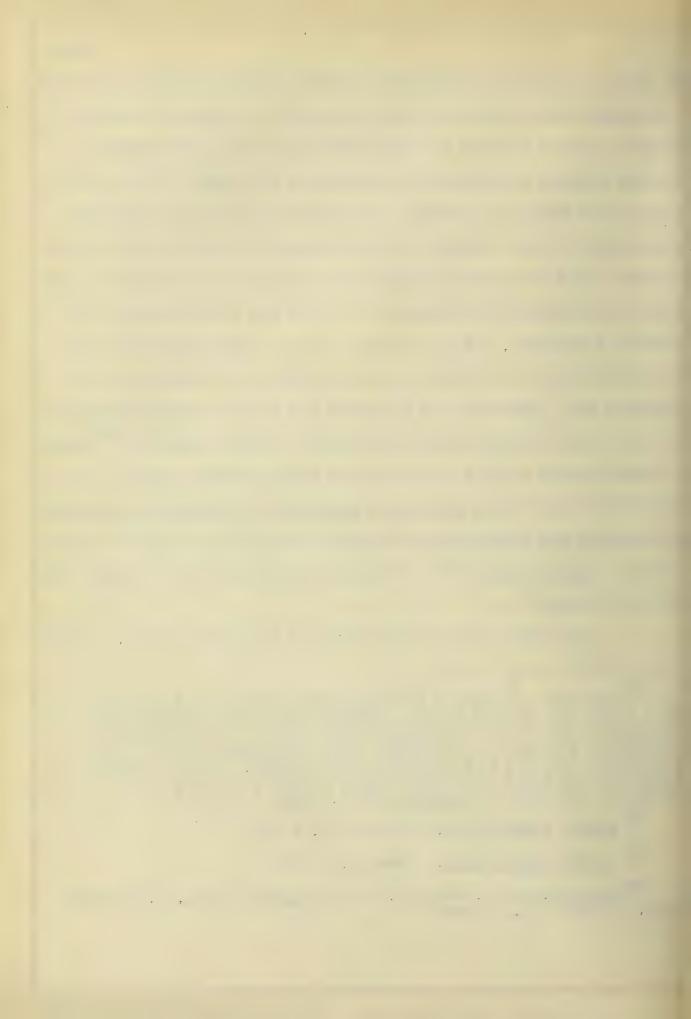
In a suit upon a voucher one of the parties said, "He was

^{89 &}quot;If one indicted of felony alleges clergy, and be found to be a clerk and claimed by the ordinary let it be inquired how he is suspected; and if the presenters upon inquiry find that there are no certain grounds for suspicion, let the judgment be that he be acquitted; and if he is believed to be guilty, let his chattels be appraised and his lands taken into our hands, and his body delivered to the ordinary." Britton, bk. I, chap. 5, sec. 3.

North. Assize Roll, 40 Hen. III, p. 91.

⁹¹ North. Assize Roll, 7 Edw. I, p. 365.

⁹² Britton, bk. I, chap. 5, sec. 3; <u>Eyre of Kent</u>, I, 151; <u>Rot. Pat.</u>, 15 Edw. III, p. 344.



sent to the bishop's prison because he would not put himself upon a jury." The judge corrected him: "You must say he was delivered after being found guilty by this court, for otherwise he would not have been delivered [to the ordinary]."93 Thus the clerk who had never admitted the jurisdiction of the secular court was released without any attention being given to the rights of the ecclesiastical tribunals, a proceeding to which the clergy protested so strenuously that in 1309 the pope included it in a statement of grievances which he sent to England. 94

The clergy complained vehemently against this innovation, but it is not certain that they did not themselves suggest to the justices the very procedure to which they objected. In 1221, Hugh, the parson of Pillerton, was accused with others of carrying away chattels worth one hundred shillings belonging to a certain Richard. Hugh appears before the justices and "defends the whole as a clerk and declines to plead before this court, but without pleading is willing to tell the truth ... and because the four townships testify that Richard was the caretaker of Hugh's property and would not render account and also that Hugh and the others carried away none of said chattels ... Hugh and the other appellees are acquitted."

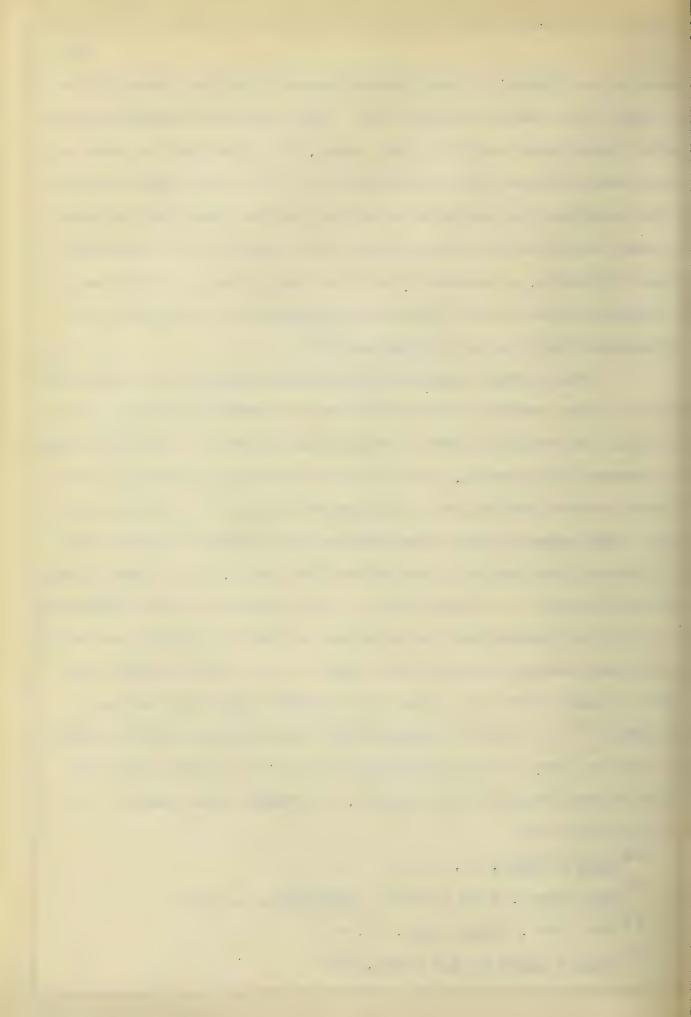
If this is compared with the process outlined above, it will be found to coincide exactly save for the fact that the clerk himself suggests the inquest, and there is no reason to

⁹³ Eyre of Kent, II. 105.

⁹⁴ Ann. Lond., 1309 (Stubbs, Chronicles, I, 166).

⁹⁵ Mat. Par., Chron. Maj., IV, 614.

⁹⁶ Select Pleas of the Crown, 102.

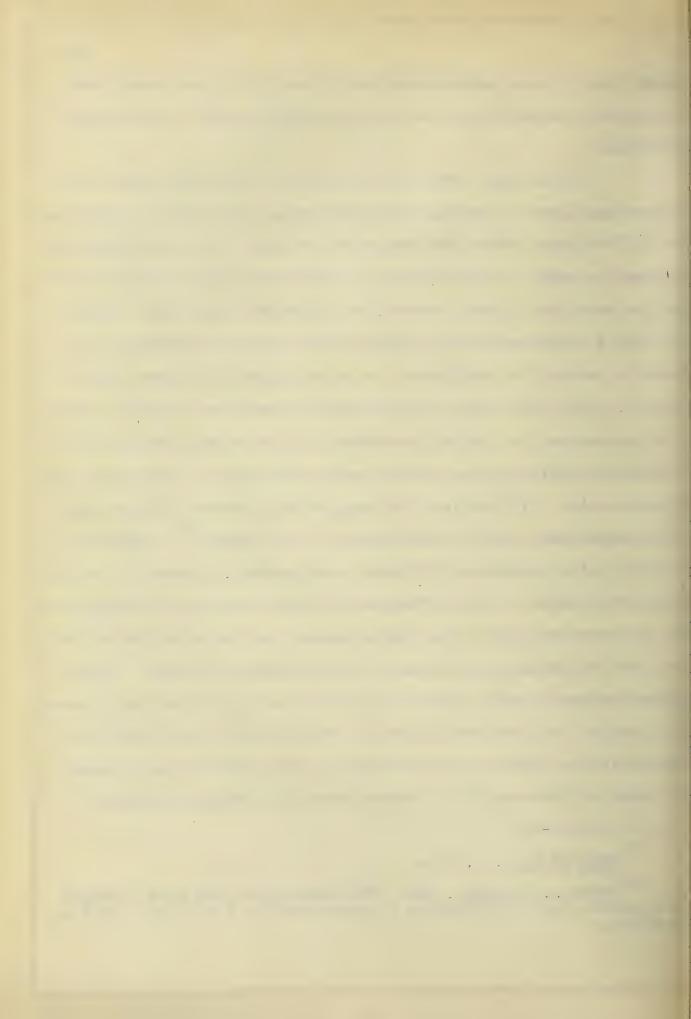


doubt that if such suggestions were occasionally made royal justices would soon adopt the resulting procedure as the regular mode of trial.

It has been noted above that the clerk might waive his clergy and plead in several different ways; this fact led sometimes to difficulties before the inquest was taken. The accused was not allowed to make a double answer, he could not claim his clergy and at the same time plead a pardon, or put himself upon the country. In 1313 a clerk accused of robbery before Justice Spigurnel produced a pardon for the offense in question and for divers other crimes, and at the same time said that he could not answer without his ordinaries: he claimed the effect of the charter for all the felonies of which he was accused before the date of its issue. The justice said: "If you wish the help of Holy Church you must drop the charter and stand to the church or vice versa."97 Almost a century later a somewhat different case appears. Richard II issued a general pardon for all offenses including treason and felony: but it was provided that in the latter cases the traitor or felon must sue for the extension of grace to his partucular offense. Jacob Dyngeleye was brought before the justices as a murderer and pleaded his clergy. He then petitioned for royal amnesty and after six months in the prison of the ordinary he was pardoned and released by order of the king. 98 In cases where the accused put himself

Eyre of Kent, I, 112.

⁹⁸ Wykeham, Register, 600. This shows that the king extended his jurisdiction to offenders although that of the church had been admitted.



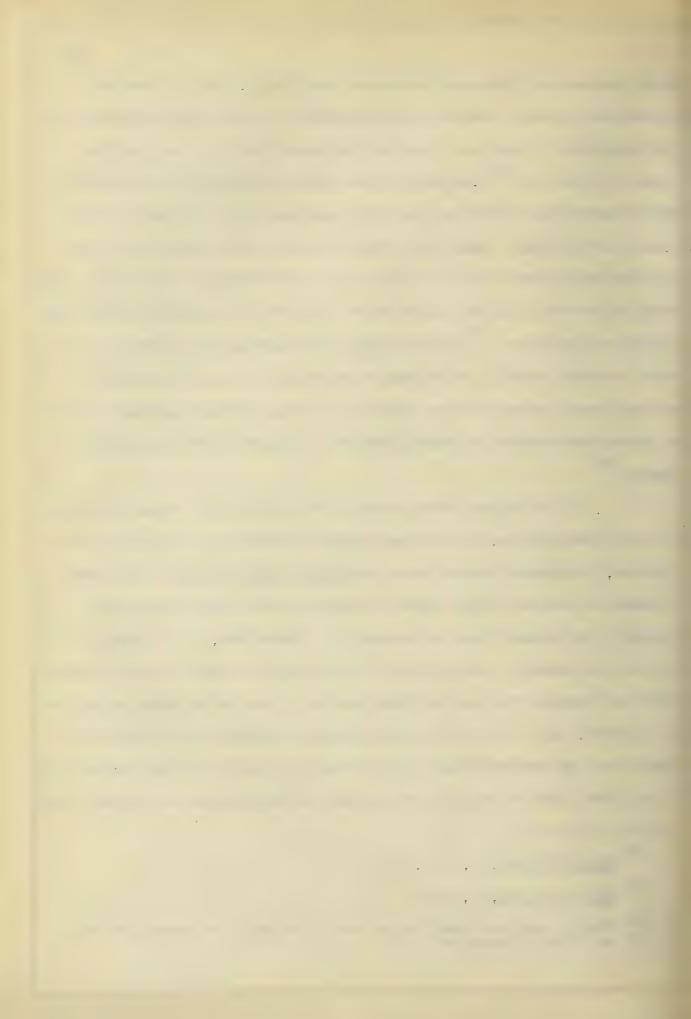
upon his country and also demanded his clergy, the difficulty raised was clear: the clerk who pleaded to the facts admitted the jurisdiction of the court and at the same time by claiming his clergy denied it. In this matter there appears a technicality which shows the direction that the justices were giving to the theory of clerical immunity. What has been said above was taken as absolutely true only in appeals by individuals; in case of prosecution by the king the clerk might reserve his right to claim his clergy at any time. This common law distinction shows the tendency to make benefit of clergy a privilege of the individual rather than a right of the church; the king extends certain favors to those who submit to royal justice in cases to which he is a party.

If the clerk after warning by the justice would not abandon his double plea, he was sent back to prison to undergo "grave penance," probably better known as peine fort et dure. This was imposed on one who would make no other answer than "saving my clergy I put myself upon my country." "Bereford, C. J. remitted him to his penance, seeing that he refused to submit to the common law; and charged the gaoler that the cell should be bare and without litter, and that on the day whereon Alan had a bit to eat he should eat of barley-bread, and of that but half of what would suffice a man, and he should have naught to drink; and on the day when

⁹⁹ Eyre of Kent, I. 119, 151.

¹⁰⁰ Eyre of Kent, I, 121.

¹⁰¹ When a man had been acquitted by default of appellor the king's suit still remained.



he had a sup to drink he should eat naught. And he found the fare so hard that the next day he came and put himself upon the country and said naught of his clergy." But this was not a complete sentence; in the case of pardon above, Justice Spigurnel, pronounced the following: "Take him back to prison and load him with as great a weight of iron as he can bear and more etc." 103

If a clerk was appealed by an approver the procedure might be somewhat different than in an ordinary appeal, for defendants in such cases, could either do battle with the approver or put themselves on the country. At times clerks chose the former alternative and it appears from the protests of the councils that the justices sometimes forced this course upon them. In either case if they were defeated in battle they might claim their clergy and be delivered to the ordinary. If the churchman claimed his privilege immediately on appeal or after accepting battle "turned recreant and said he was a clerk" he would be delivered to the ordinary "as a clerk conquered in battle."

There was another important exception to the usual procedure in the trial of churchmen, the replication of bigamy. Had

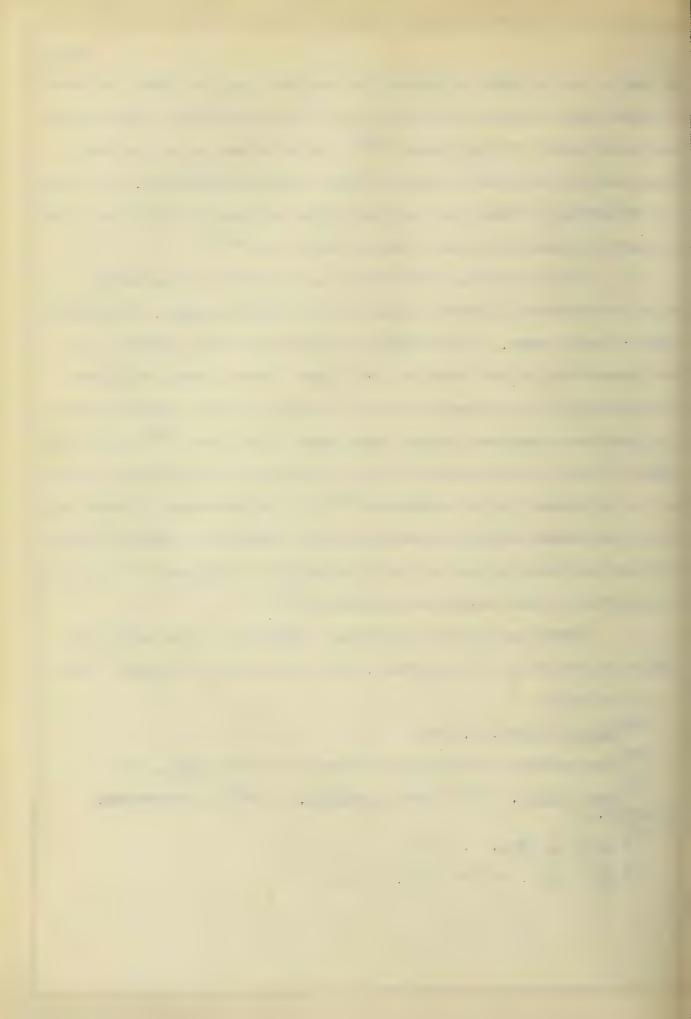
¹⁰² Eyre of Kent, I, 125.

¹⁰³ The sentence would then proceed as above. Ibid., 112.

¹⁰⁴ Ann. Burt., 1257 (Luard, Annales, I, 265); Bronescombe, Register, 30.

¹⁰⁵ Eyre of Kent, I, 119.

¹⁰⁶ Rot. Pat., 42 Edw. III, p. 166.



the person claiming benefit of clergy been twice married or had he married one widow, he was excluded from his privilege by canon law, and was treated by the courts as a laymen. 108 If the ordinary accepted a bigamus he was to be fined by the secular court. 109 The trial of bigamy varied for some time: Horne says that "if the jurors say they are ignorant then a certificate upon this point must come from the ordinary:"110 the dictum of a justice in 1313 is that "if a clerk arraigned for felony shall plead his clergy inquest shall be made as to whether he is a bigamist." Edward III conceded in response to the petitions of the clergy that allegations of bigamy should be tried by the bishop in Whatever manner he saw fit, but that the clerk should remain a secular prisoner while the inquest was being made. 12 A petition in 1376 of the commons regarding this matter is of interest: "Because of divers pestilences many men of the realm, as well Peers. Bachelors, and Esquires as all other manner of men have married to widows, or have been married to two wives and become bigamists while others, their wives having died, hesitate to marry to avoid bigamy and hence live in

¹⁰⁷ It should be remembered that only the regular clergy and those of the secular in the orders of subdeacon or above were forbidden to marry. Wilkins, Concilia, I, 382, 476.

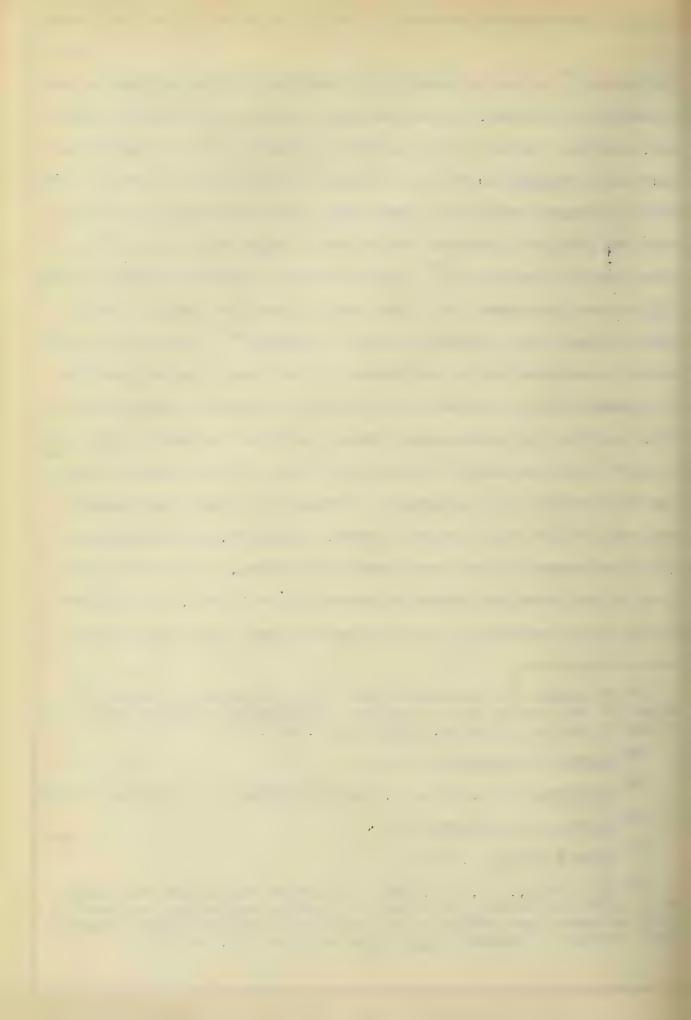
¹⁰⁸ Mirror of Justices, 92-93.

Britton, bk. I, chap. 5, sec. 5: Fleta, bk. I, chap. 34, secs

Mirror of Justices, 93.

lll Eyre of Kent, I, 140.

Rot. Parl,, II, 151, 153. The patent rolls show the pardon of a clerk who proved his clergy by reading and claim, and was then held in Marshalsea awaiting the certificate of the bishop concerning a charge of bigamy. Rot. Pat., 42 Edw. III, p. 160.



master the king to grant, to the honor of God and the Holy Church, that if anyone be arraigned before any judge for felony, and he be put to his clergy and anyone shall except because he is a bigamist; that this shall be of no value from this hour forward, but that he shall be delivered to the prison of his ordinary." Edward III was not the man to surrender his advantage, he replied "that he would take it under advisement."

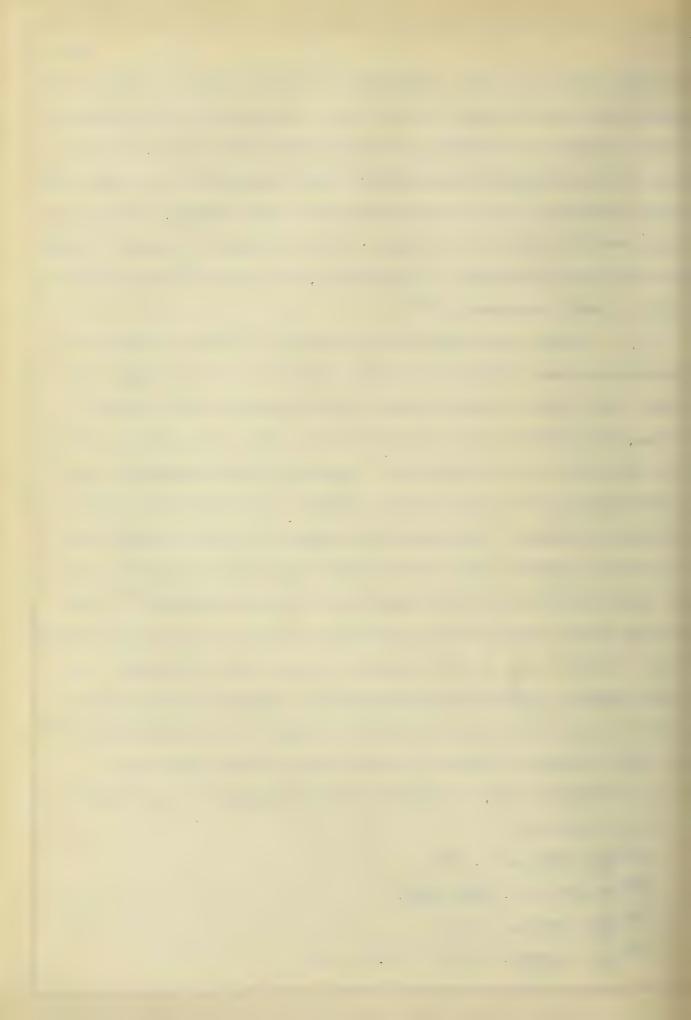
When a churchman was convicted by inquest of office the supposition was that he be at once admitted to the clerical privilege. The judges however raised numerous exceptions to these rules, some of which were drawn from the common law and some from the attitude of the ordinaries. A part of these exceptions were made because of the nature of the offense and others on purely technical grounds. The practice in cases of treason varied until Edward III provided that clerks should enjoy their privilege save in cases touching the king himself or his royal majesty. The status of the crime of counterfeiting the king's seals or his money, which by later law is petit treason, caused much difficulty. In 1290 Edward I orders that an offender be admitted to his clergy although his council believes that it should not be allowed him; 115 in 1338 a clerk is purged of having counterfeited the king's seal; 116 but in 1352, two years after the passage of the statute

¹¹³ Rot. Parl., II, 333.

^{114 25} Edw. III, Pro Clero, 4.

¹¹⁵ Rot. Parl., I, 40.

¹¹⁶ Rot. Claus., 12 Edw. III, p. 300.



mentioned above, Edward says he is not decided whether to admit these offenses to clergy and orders justices to hold clerks in gaol until he has decided. 117 Sacrilege was another offense wherein the privilege of clergy might be denied but here the matter rested with the ordinary. "Skipwith J. said that a certain man was indicted before him of stealing a chalice and of desecrating a church; and he was asked if he had his clergy and he said yes. "118 Archbishop Peckham demanded clerks who had been condemned for burning a church," and it appears that the offenders against Norwich cathedral in the previous reign also were admitted to the privilege. 120 In one case the judge objected to the delivery of a church robber saying: "You cannot have him for he is a robber of Holy Church and a traitor to her and he has therefore forfeited the protection of Holy Church." But it appears that the ordinary was insistent and at last the man was delivered. 121

In cases of escape from the prison of the ordinary the clerk's delivery depended on the claim. A certain M. was delivered as a clerk convict to the abbot of Westminster; he escaped from the abbot's prison and upon recapture claimed his clergy. The justices said: "He who offends against the law invokes the law in vain; because you have done this violence to Holy Church it is not right to

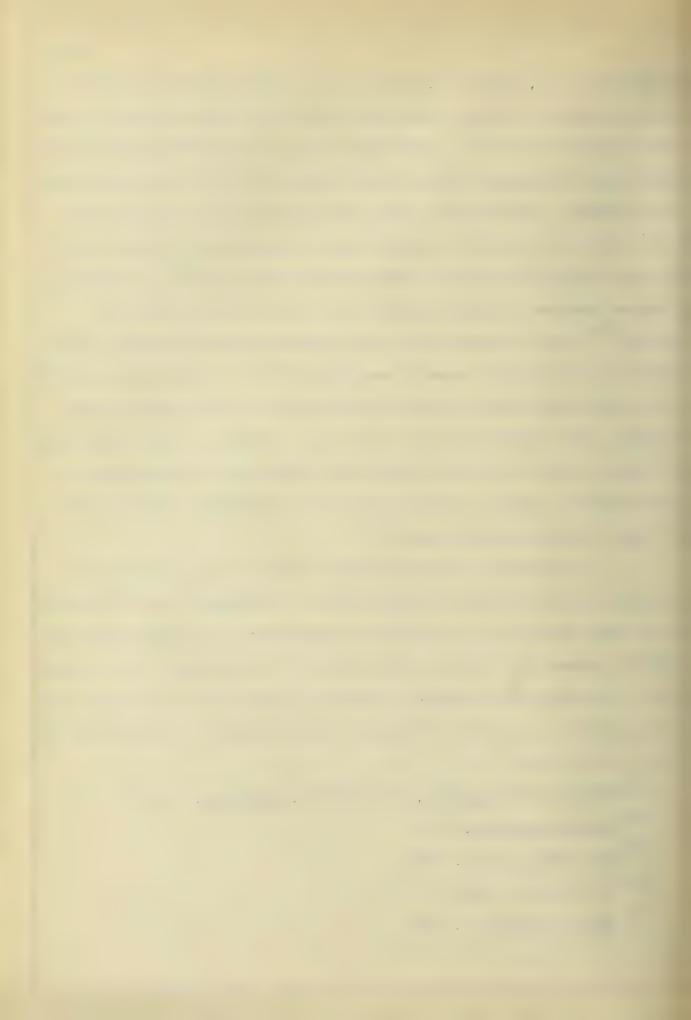
¹¹⁷ Grandisson, Register, 76; Wilkins, Concilia, II, 28.

¹¹⁸ Liber Assisarum, 123.

¹¹⁹ Reg. John. Peck., 833.

¹²⁰ See above, p. 98.

¹²¹ Eyre of Kent, I, 154.



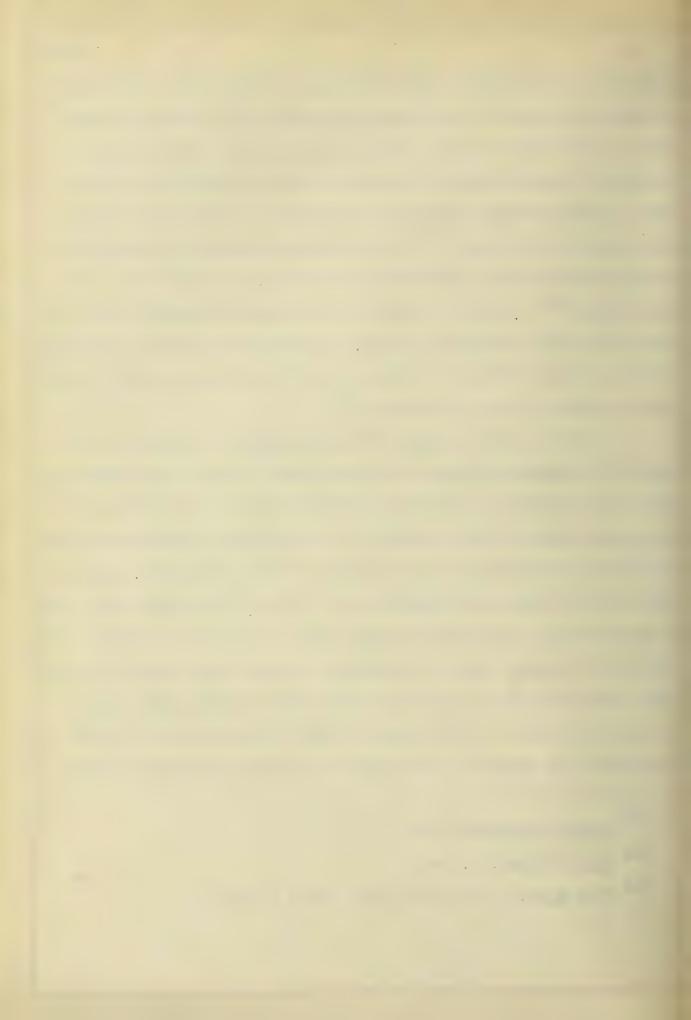
give you the privilege unless the bishop invokes it in your behalf. If you are claimed by the bishop you shall not be hanged but you shall be delivered to him." The reporter adds: "Note that at Everwike a man was hanged because the bishop disclaimed him and thus M. was afterward hanged at Westminster because the ordinary disclaimed in his case." In the reign of Edward II occurred a similar case with the aggravation of murder, and again the clerk was hanged. In 1344 a clerk who had committed murder during an escape from the ordinary's prison, was denied the right to turn approver and was remitted to prison until the ordinary should decide what he wished to do in the case.

There were numerous technical grounds on which a clerk might not be delivered. Purgation was supposed to clear the clerk convict of all offenses committed previous to arrest; therefore, the justices, possibly with the idea of establishing jurisdiction over all crimes and assuring some punishment to the churchmen, adopted the plan of trying one accusation at a time in instances where the prisoner at bar was accused of more than one offense. Between trials the prisoner would be remitted to gaol thus assuring a certain amount of secular punishment and also arousing great opposition on the part of the clergy. Their petitions were at last successful and Edward III declared that no new prosecution could

¹²² Liber Assisarum, 138.

¹²³ Eyre of Kent. I. 86.

¹²⁴ Year Book, 17 Edw. III, 212 (Roll Series).



be begun without a new arrest. 125 The way in which claim was made was another general ground on which clergy might be denied. It has been noted above that unless the commissary carried the letters of his ordinary he was liable to imprisonment. Moreover, these let ters had to be in the proper form; and thus if they did not allege the right of the commissary to receive as well as to petition for the clerk he would not be delivered. 126 At times clerks who put themselves on the country in cases brought by indictment were hanged upon conviction even though the justices knew that they were clerks. This was laid at the door of the ordinary who should have made a claim even though the malefactor did not do so himself: 127 but "it was said in a crown case that if a clerk put hir self for good or bad upon the country and is found guilty and the judge well knows that he is a clerk because he can read, if no one wishes to [challenge] him for the church he shall not be hanged." 128 However. if the accused first claim clergy, then abandon it, then reclaim it after conviction, if the ordinary does not demand him he is to be hanged because it is apparent that he is trying to avoid justice. Finally, it appears that by the common law only the king's justices were competent to surrender a clerk to his ordinary and therefore when deliveries were made by the hundred or by the city

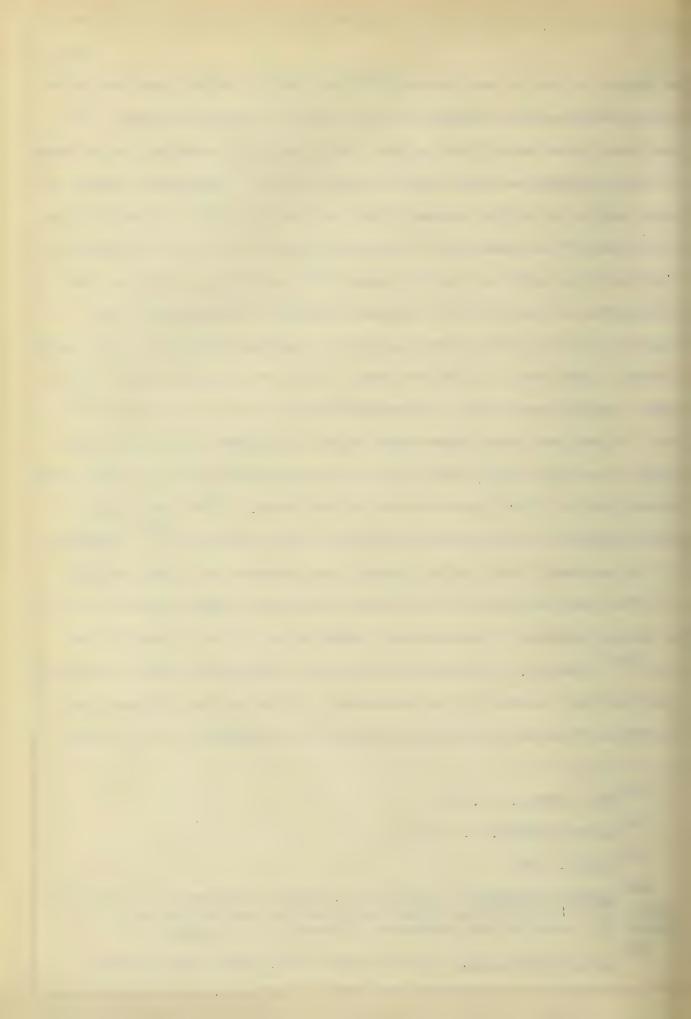
¹²⁵ Rot. Parl., II, 244.

¹²⁶ Eyre of Kent, I, 123.

¹²⁷ Ibid., 154.

Liber Assisarum, 138. This is further evidence of the existence of both strict and loose construction and of the work of judges in changing the character of benefit of clergy.

¹²⁹ Ibid.; Year Book, 11 and 12 Edw. III, 599 (Roll Series).



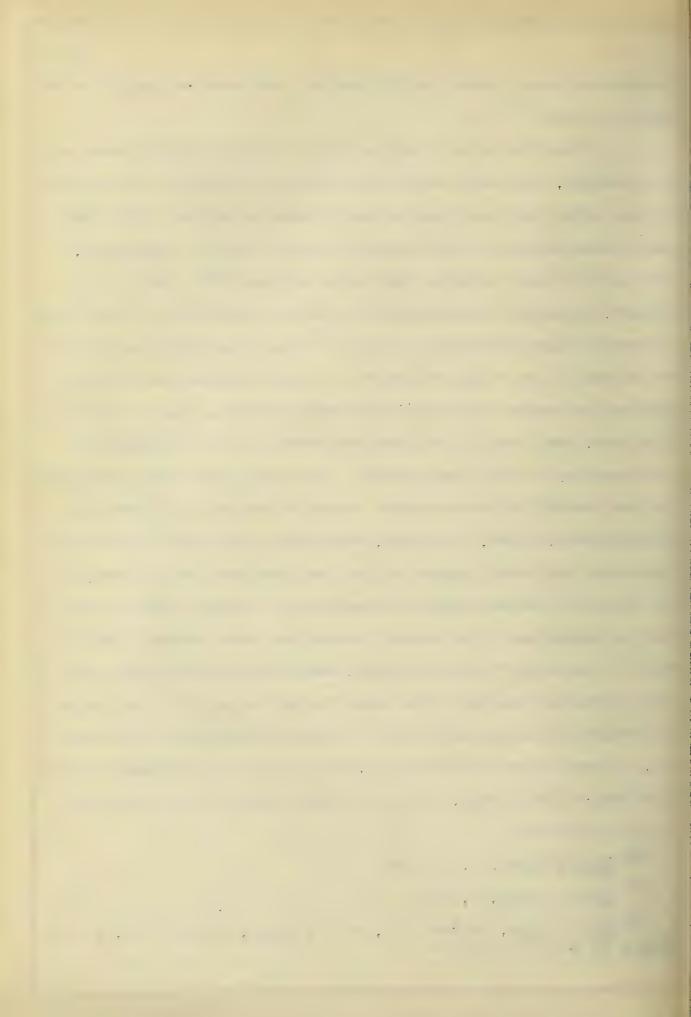
courts they were illegal and the suitors who were responsible were liable to fine.

When the clerk found guilty by inquest was delivered to the ordinary, his lands and chattels were forfeited to the king to be held until the time when he should make purgation. The clerk was allowed enough of the income to provide for his sustenance. "but his wife and children shall have nothing." 131 The king, it appears, generally transferred title to the usufruct of these lands to someone whom he wished to favor. 132 The close rolls exhibit a new custom in the reign of Edward I; in the entries for 1293 regarding the return of property to purged clerks appears a new inquisition, one taken by the secular power as to the reputation and character of the clerk convict. The roll will read as follows: "To the sheriff of Westmoreland: order to restore to Gilbert de Burnotfisherd, clerk, his lands, which were taken into the king's hands upon his being charged before the justices last in eyre in the county of Westmoreland with harboring a thief, John de Wyse who was hanged and other common thieves who were solemnly indicted when he was sheriff of that county, and with receiving money and other goods and chattels from such thieves to protect them, as he has purged his innocence before J. bishop of Carlisle, the diocesan, to whom he was delivered by the justices in accordance with the privilege of the clergy, and as the king learns by an inquisition

¹³⁰ Eyre of Kent, I. 82, 148.

Eyre of Kent, I, 141.

¹³² Rot. Claus., 28 Edw. III, p. 16; ibid., 30 Edw. III, p. 341; ibid., 38 Edw. III, p. 18.



that he afterward caused to be made by the sheriff and the coroner of that county that Gilbert is of good fame and faithful conversation and was never a public or notorious evildoer." Ninety per cent of the letters to this purpose sent to the sheriffs and escheators between 1293 and 1301 are in the same words; then the inquisition disappears as abruptly as it came. No other record of this innovation appears elsewhere; but it may be believed that the attempt of Edward to place canonical purgation on a footing different from secular acquittal was ended through the opposition of the church.

awaiting purgation in the prison of the ordinary. He was convicted only as far as was possible in a secular court, and that was no conviction at all. This is proved by the fact that the accessories of a clerk convict were generally released on bail to await the action on his case, and his purgation relieved them of all responsibility. But while the clerk convict was in prison he was outside the law; he would not be summoned as a witness in a civil case nor was he allowed to make a warranty. It seems that the one privilege that remained to him was that of making a will that would be good at law.

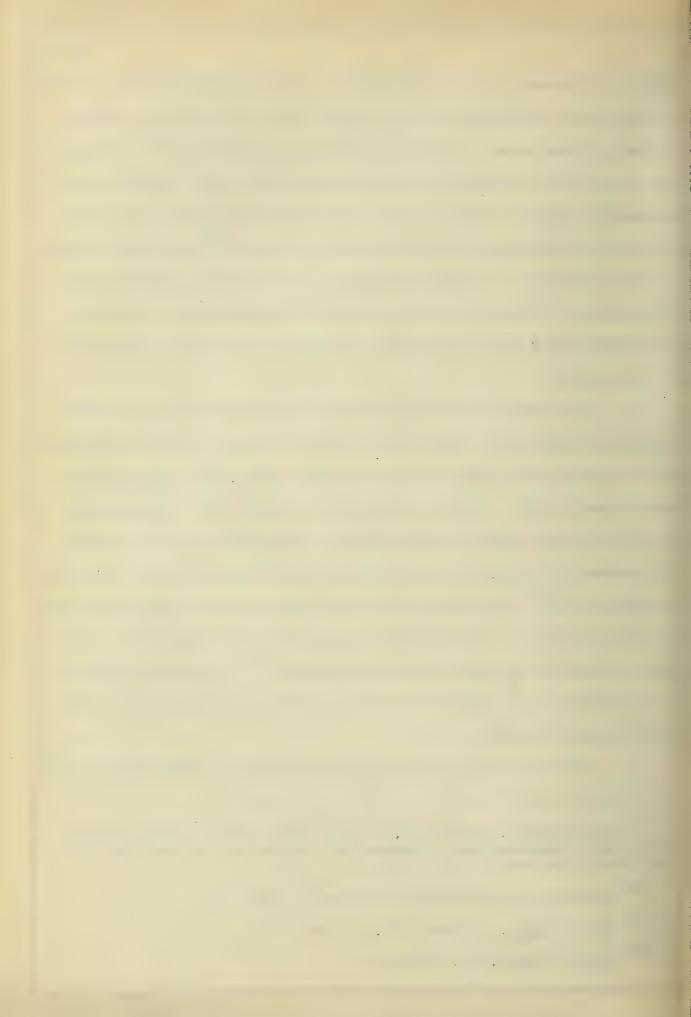
The delivery of a clerk convict to his ordinary was gen-

Rot. Claus., 23 Edw. I, p. 406. This writ has been chosen among many, because some interest may attach to the position of the clerk involved.

¹³⁴ There is one isolated instance in 1305.

¹³⁵ Rot. Claus., 13 Edw. III, p. 326.

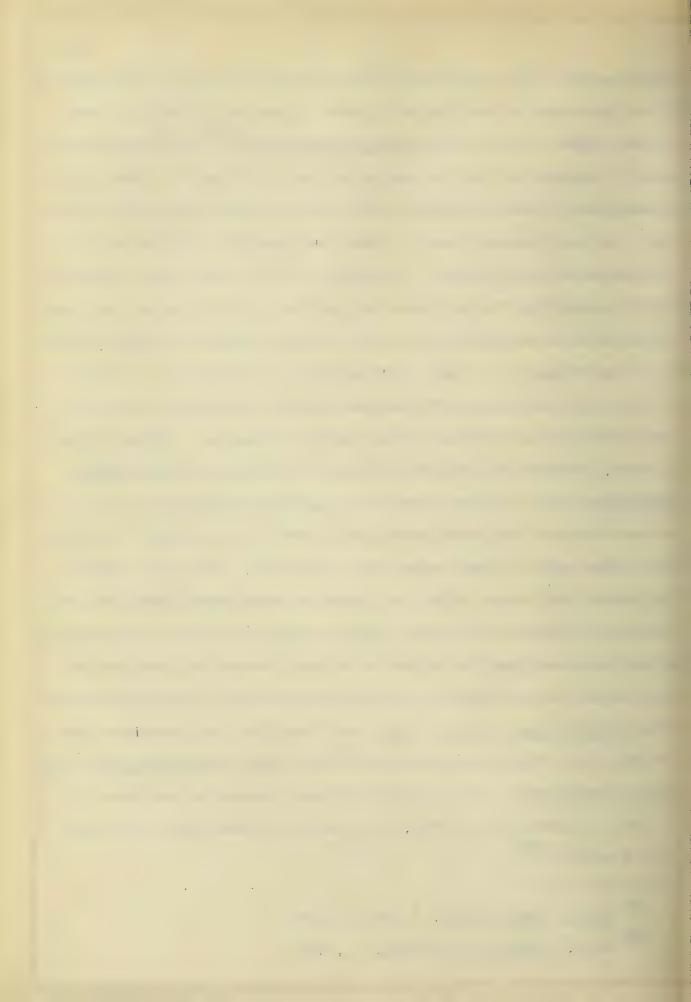
¹³⁶ Eyre of Kent, II, 105-107.



erally made without condition but as early as the reign of Edward I those convicted of particularly grave crimes were sometimes sent to the prison of the church absque purgatione. 137 This stipulation made it impossible for the ecclesiastical officials to take further proceedings without a special writ from the king and usually meant that the clerk convict was to spend the remainder of his days in the ecclesiastical prison. A delivery of this kind was clearly in direct opposition to the canon law and the prelates more than once objected to this action of the lay justices which virtually amounted to an extension of their jurisdiction to control the destinies of the convicted clerk after he had passed from their hands, and a limitation on the freedom of the church tribunals. Protests were in vain, however; the judges continued to deliver clerks absque purgatione and to assess heavy fines against prelates who were so contemptuous of the royal power as to admit to purgation those who were given over to them under this disability. While the see of Canterbury was vacant after the death of Archbishop Stratford two clerks who had been delivered absque purgatione to the archbishop's prison were admitted to purgation by Hugh Forsham and another who were acting as guardians of the spiritualities. The purgation was made absque mandato domini regis and therefore the guardians were arrested and after confession were fined pro transgressione & contemptu praedictis. The clerks were again arrested and were for a time confined in the Tower, but later they were again delivered to the church. 138

North. Assize Roll, 7 Edw. I. 366.

Hale, Pleas of the Crown, II, 328.



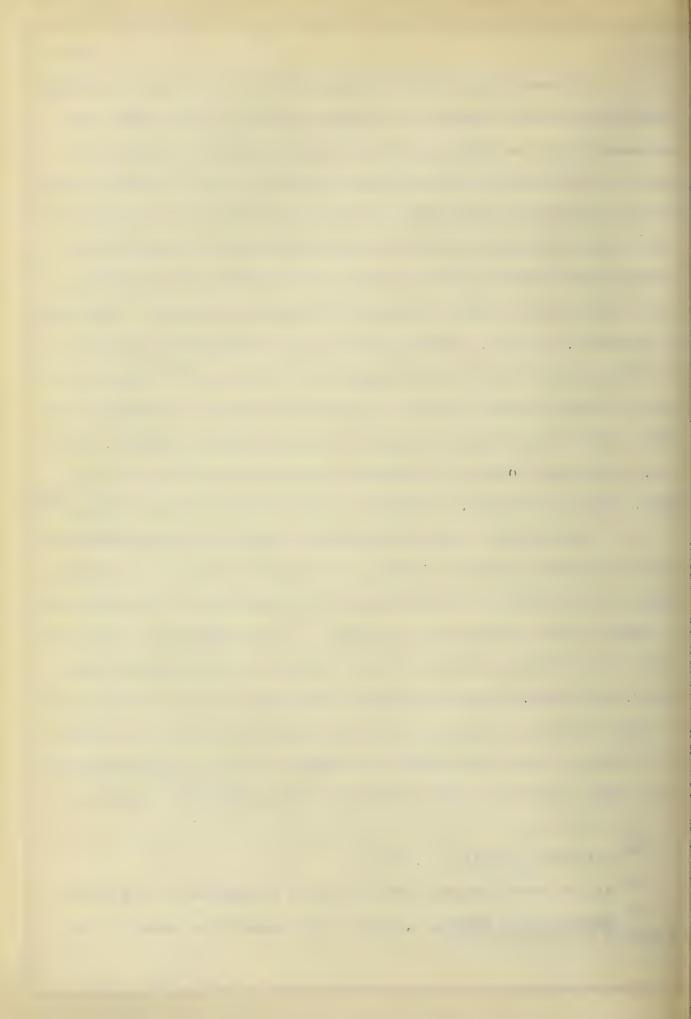
Jurisdiction would maintain a suitable prison in order that his prisoners might be kept securely. That the supposition and the practice differed for a long time is proved by the instances cited above in which the king made over the use of one of his prisons to some prelate who after establishing his jurisdiction over an ecclesiastical criminal had no secure place to keep his prisoner. The church did its best to remedy this weakness however: Archbishop Boniface, in 1261, ordered each of his suffragans to provide suitable prisons for the safe-keeping of offenders. Mention is made of the episcopal prisons of the archbishops of Canterbury and York and of those of the bishops of Lincoln, London, Exeter, Durham, and several others as well as the monastic gaols of St. Albans, Bury St. Edmunds, Dunstable, and St. Mary's Abbey, Dublin. 140

The prison of the ordinary was kept by his appointees who might be either clerks or laymen. In time of vacancy the chapter acted in the place of the bishop in the appointment of keepers and in managing the affairs of the prison. 141 The commission that was sent to the officers chosen to have charge of the ecclesiastical gaols, was standardized in much the same way as that issued to officials deputed to claim and receive clerks delivered by the secular courts. A commission from the chapter of York, sede vacante, to John Brune, bailiff of the liberty of York and Richard Kernour,

¹³⁹ Wilkins, Concilia, I, 755.

All of these prisons are mentioned elsewhere in the text.

¹⁴¹ Memorials of Ripon, I, 139. This commission seems to be directed to seculars.

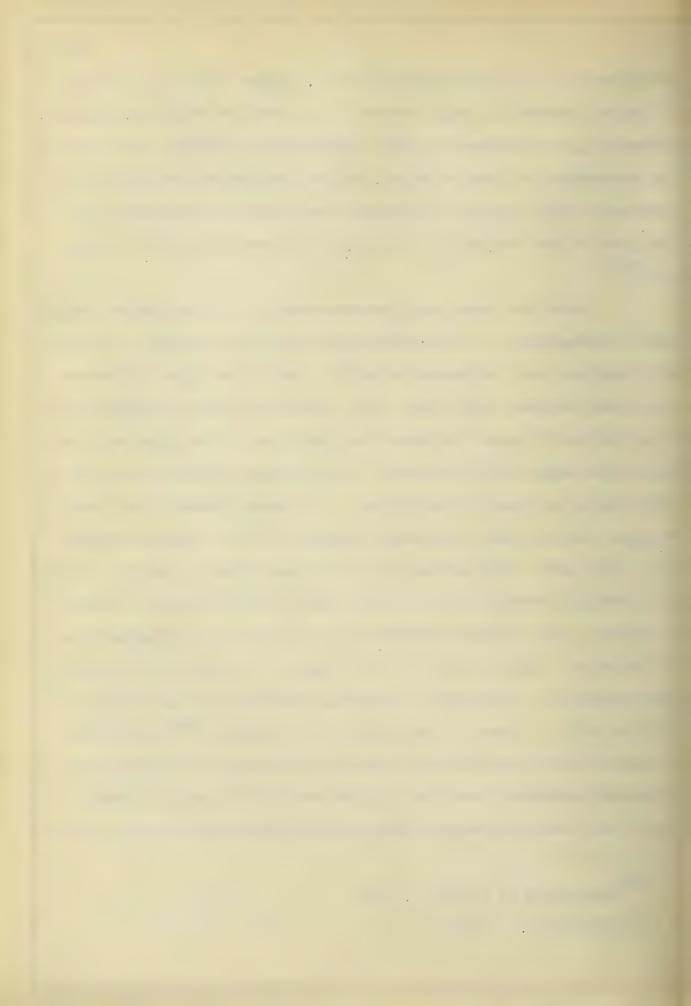


custodian of the ecclesiastical prison, reads: "To you and each of you we concede by these presents the power of ordering, keeping, conducting, and disposing of all and singular clerks in the gaol of the archbishop of York at Ripon, and we commission you for their delivery to our church at York under safe and secure custody for the time of the vacancy of the see, of whatever duration it may be." 142

Once the clerk was incarcerated his fate depended largely upon the character of the ordinary who had him in charge, and probably upon his own importance as well. Men of the type of Grosseteste and Peckhan were likely to do their full duty in matters of this kind and in such instances the position of the clerk convict was not an easy one; the prisons of the church could be made as uncomfortable as those of the state. It appears however that confinement was not made especially irksome for the rich and power-In a case noted above, that of Richard Perers, knight, clerk, and probably favorite of the queen, the fact that he was a felon, an outlaw, and a prison-breaker did not work to his disadvantage. His days as a clerk convict of the bishop of London at Storteford were passed in a comfortable chamber, from which he might sally forth at will to hunt in the parks of the bishop. 143 Archbishop Wickwane of York reproves the provost of Beverly for keeping his prisoners carelessly and the chapter book of the same minster shows that one Alan who was the provost's official made their hall

Memorials of Ripon, I, 139.

¹⁴³ See above, p. 156.

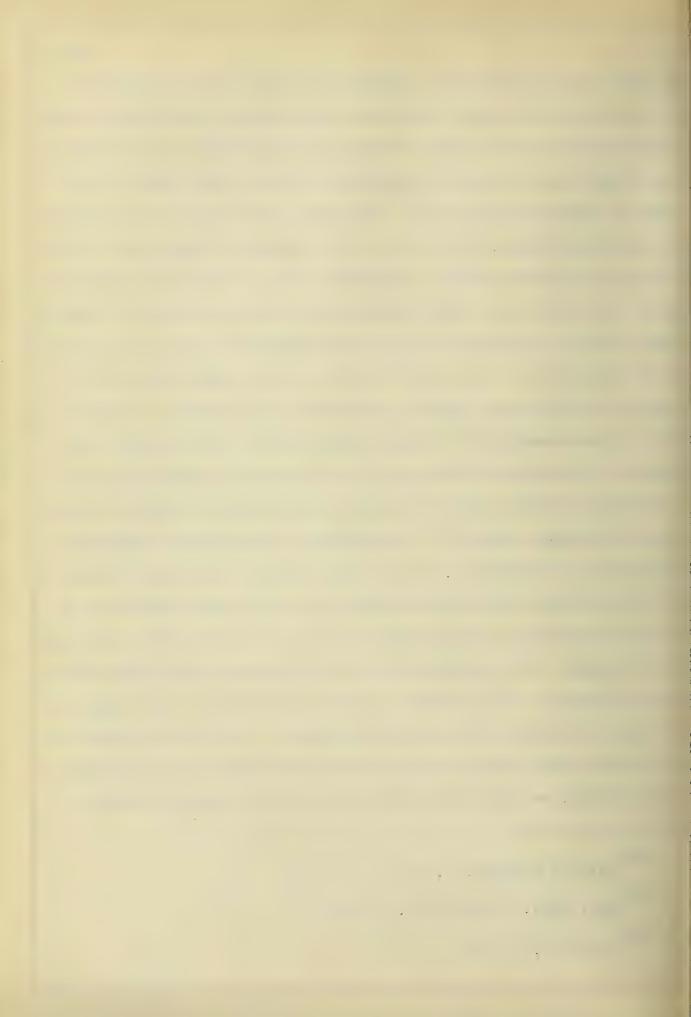


"a cave for wrongdoers who had been convicted at the inquisition of the king's justices;" the canons who complained against Alan especially disliked the feasts spread for the convicts and the roaring fires built by them "in our great hall .. which smoked up the vicar's sacrificial table." 144 In these cases there is no evidence of immediate damage, but a writ of aid issued on the behalf of the bishop of Salisbury tells a different story: John de Say, delivered to the bishop as a clerk convict, has been permitted to "roam at large" by the ministers of the bishop "whereby he does and procures to be done divers ills as well in the city of London as in the counties of the realm" and is therefore to be retaken at once and kept in safe custody. 145 It was malfeasances like this that led Edward I to issue his warning to the church as a result of which Archbishop Peckham issued an appeal for greater strictness in dealing with clerks convict. 146 Archbishop Islip was more alarmed by the threat of Edward III. for he sent letters to all the bishops of the province of Canterbury ordering a more severe treatment of clerical criminals and even going so far as to prescribe their fare while in gaol. The character of the imprisonment was to vary somewhat according to the offense of the prisoner but it was always to be rigorous enough to be a real punishment. The dietary established for the great criminals consisted of bread and water on Sundays and holidays, on other days bread and a little meat; on certain

Beverly Minster, I, 60.

¹⁴⁵ Rot. Pat., 17 Edw. III, p. 87.

¹⁴⁶ See above, p. 113.



days "for the honor of the Master" a ration of beans was to be added to the regular menu and the prisoners were to be allowed to accept gifts of their friends, a privilege refused at other times. 147

Not only was there a vast difference in the nature of the imprisonment to which the clerk convict was subjected but there was also great variance in the length of time during which he should remain in gaol before he was to be given an opportunity to make his purgation. The secular complaint that clerks were admitted to easy purgation had no doubt a firm foundation, 148 although there is reason to doubt that the abuse was as extensive as the laymen would have it appear: but even if this is admitted to its fullest extent. the real hardship of the clerk convict has been overlooked: his greatest difficulty lay not in proving his innocence but in getting the opportunity to do so. A man of importance or influence may have been admitted to purgation within a short time, but it was more than likely that the unknown or unimportant clerk would remain in prison for several years at least. Here again the attitude of the bishop must be taken into consideration, and it will be found that clerks remained much longer in the gaols of prelates who had a lofty view of the priestly calling than in those of ordinaries of

Political Songs of England, John to Edward III, 234.

¹⁴⁷ See above, p. 158.

¹⁴⁸ Evidence is given by The Outlaws Song of Traillebaston that all laymen did not think lightly of ecclesiastical punishment:

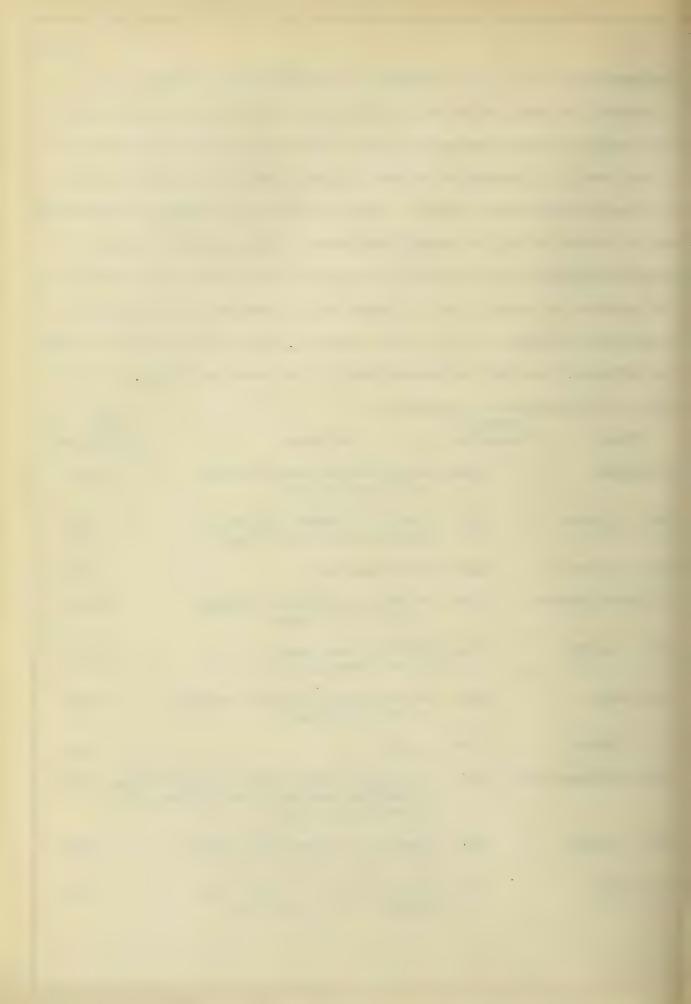
Si tu saches de letture, e estes coroucé, Devaunt les justices serrez appellée; Uncore poez estre à prisone retornée, En garde de le evesque, jesque seiez purgée, E suffryr messayse e trop, dure penaunce, E par cas n'averez jamès delyveraunce.

Pur ce valt plus ou moi à bois demorer, Q'en prisone le evesque fyerge gyser. Trop est la penaunce e dure a soffrer; Quy le mieux puet eslyre, fol est que ne velt choyser.

the worldly type. The character of the offense of which the churchman had been convicted in the lay court had no bearing upon the length of his imprisonment and the petty thief might remain in prison awaiting purgation a much longer time than the man guilty of rape or atrocious murder. Examples which illustrate this matter may be found in any episcopal register of this period; that of Bishop Wykeham of Winchester furnishes an excellent illustration of the matters in point. Out of some twenty records of admission to purgation thirteen give the full details, the name of the offender, the offense, the date of conviction in the secular court, and the

date of the order for purgation:

	e of	Offense Pr	Date of urgation
Wm. Dyket	1362	Theft of 30 sheep valued at 60 shillings	1368
Thos. Lyband	1361	Theft of horse and bridle valued at 40 shillings	1369
Robt. la Bode	1358	Wife murder	1370
Nicholas Shorte	1367	Theft of 29 sheep valued at 100 shillings	1370
Robt. le Eyr	1343	Theft of two sheets and three coverlets	1371
John Bray	1380	Theft of two horses valued at 51 shillings	1392
Thos. Kendale	1380	Murder	1392
John Maisterstone	1378	Theft of horse worth 20 shilling a gelding worth 10 shillings, ar 10 shillings cash	gs, 1392 ad
Nich. Spurs	1379	Theft of silver cup with a gold top worth 20 marks	1392
Walt. Mason	1392	Theft of ox and cow total value at 20 shillings	1392



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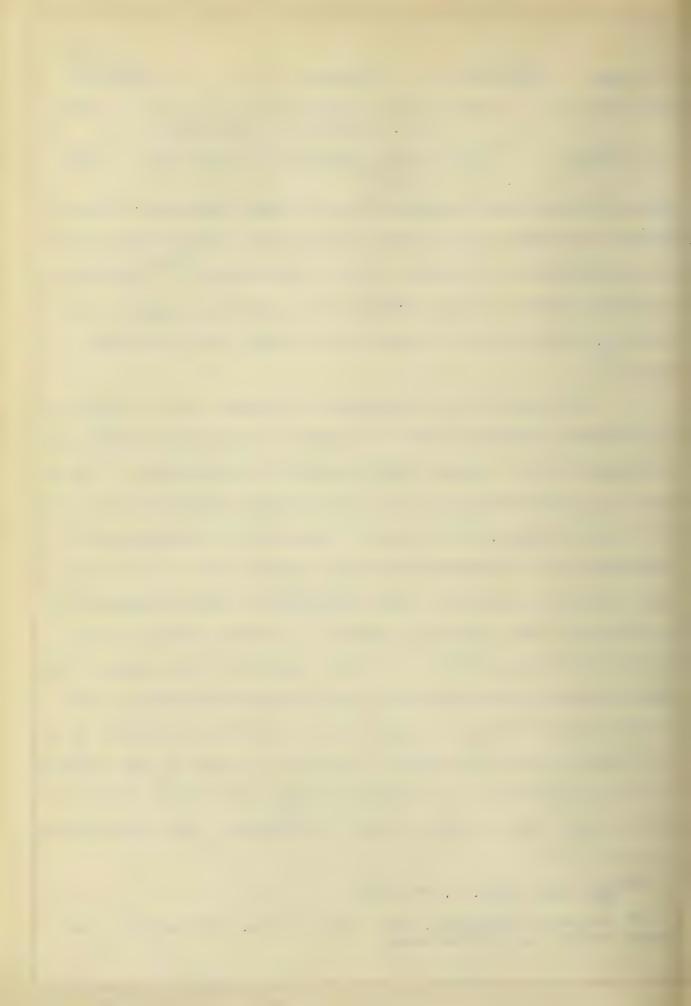
Date of Date of Offense Conviction Purgation Name Theft of two dishes and cover-1392 Thos. Taylour 1375 let. total value 2 shillings Thefts amounting to 6 shilling 1394 1390 John Chapman 8 pence

Similar evidence may be deduced from the other registers: Bishop Kellawe of Durham in his orders for purgation spoke of the prisoners as having been in custody for "no little time," but Bishop Stapeldon of Exeter in 1316 admitted six clerks to purgation at one time, none of whom had been in his prison longer than two years.

The liability of the ordinary to answer for the escape of his prisoners continued after the custom of immediate delivery had disappeared and it became a heavy burden to the churchmen. The escape of a clerk convict from an ecclesiastical prison led to a fine of a hundred pounds; and, when the frequency of such evasions is considered, it is remarkable that the prelates were not in a constant state of bankruptcy. That they were not may be explained by the fact that they generally evaded the logical result of the weakness of their prisons or the carelessness of their gaolers. In 1324 the prior of Ely petitioned the king for relief from a fine of 5 100 levied because of the escape of one Robert Carpenter at a time when the prior was alleged to have been acting as the guardain of the spiritualities of the diocese of Ely. The prior in his petition denied that he had ever been the guardain, that the prisoner

¹⁴⁹ Reg. Pal. Dun., I, 58, 462.

¹⁵⁰ Stapeldon, Register, 508. Two thieves, two burglars, one church robber, and one murderer.



had ever been delivered to him or had ever escaped from his prison. Upon hearing the petition the king ordered the prior to put himself upon the country in regard to it. 151 The abbot of St. Albans summoned to answer for the escape of twenty clerks also was tried by jury. 152 In 1357 Bishop Michael of London was fined & 1200 for the escape of twelve clerks from his gaol at Storteford though five were recaptured on the same day that they broke prison. However, in consideration of his "manifold services," the king accepted 100 in settlement. 153 The archbishop of Dublin was also pardoned the escape of two clerks in 1355, 154 only to appear in the rolls three years later because these two men, captured and returned to prison, not only made a second escape but forced two other prisoners to accompany them: who not only went unwillingly but returned to the prison as soon as possible. Because of his services the bishop was pardoned a second time. 155 The fact that the prison breaker's fate depended upon the attitude of the ordinary has been noted above: but the secular authorities found other means of punishing this offense, in some instances means which were beyond the

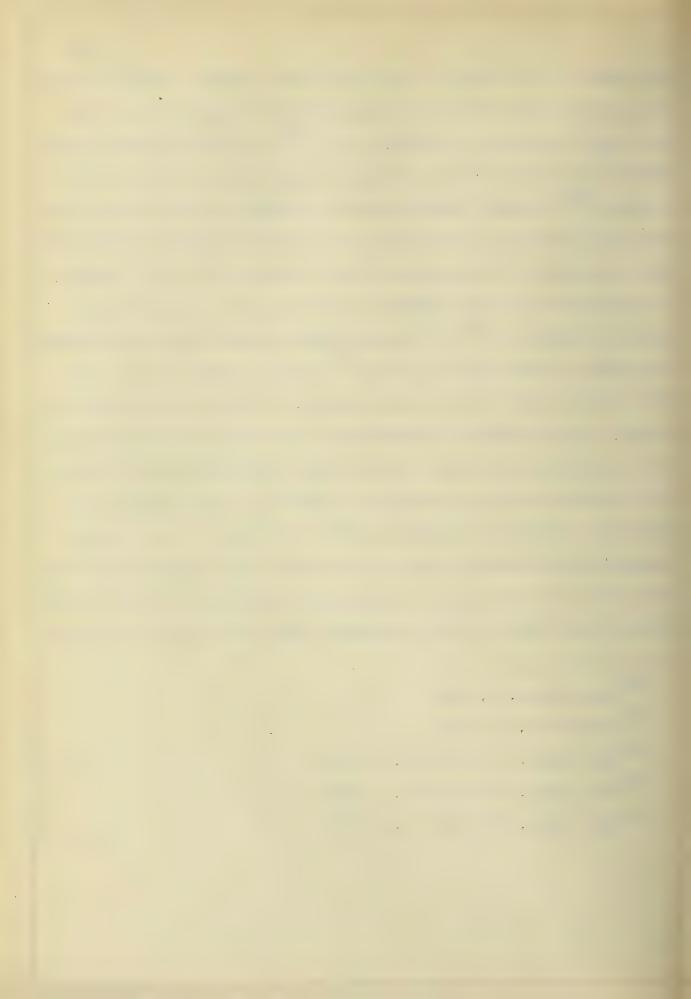
¹⁵¹ Rot. Parl., I. 424.

¹⁵² See above, p. 154.

¹⁵³ Rot. Pat., 31 Edw. III, p. 582.

¹⁵⁴ Rot. Pat., 27 Edw. III, p. 467.

¹⁵⁵ Rot. Pat., 30 Edw. III, p. 355.



reach of ecclesiastical interference: John Clement escaped from the episcopal prison at Canterbury and after a time was located in the county of Derby "enriched with much goods." The king thereupon issued a commission for Clements' arrest ordering that he "be delivered to Marshalsea prison until he be delivered according to the law and custom of the realm" and that all his goods be seized into the king's hands. 156

It is not without significance that the registers during the reign of Edward III show that clerks convict remained longer in prison than at an earlier period, but at the same time the effect of Edward's statute must not be overemphasized. Bishop Grandisson in a letter written in 1351 promised that justice should be done in all cases, civil and criminal, with the least possible delay, and, though it might be argued that the intention of the bishop was to assure those who were complaining of the slowness of ecclesiastical tribunals in settling suits within their jurisdiction, the rapidity with which he admitted to purgation clerks convict in his diocese proved that he was not thinking of civil cases alone. 157

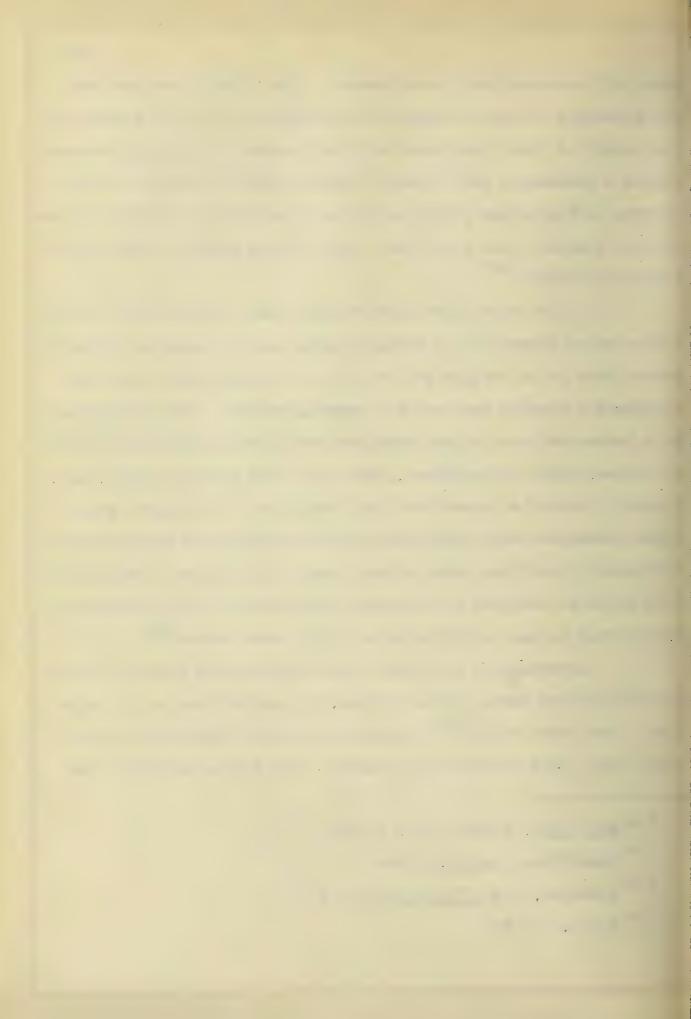
According to the canon law criminal cases might be tried in one of three ways: by accusation, by inquisition, or by purgation. The first method 158 required a written charge which the accuser must prove or suffer punishment. The second method 159 was

¹⁵⁶ Rot. Pat., 47 Edw. III, p. 306.

¹⁵⁷ Grandisson, Register, 949.

¹⁵⁸ Fournier, Les Officialités, 235 ff.

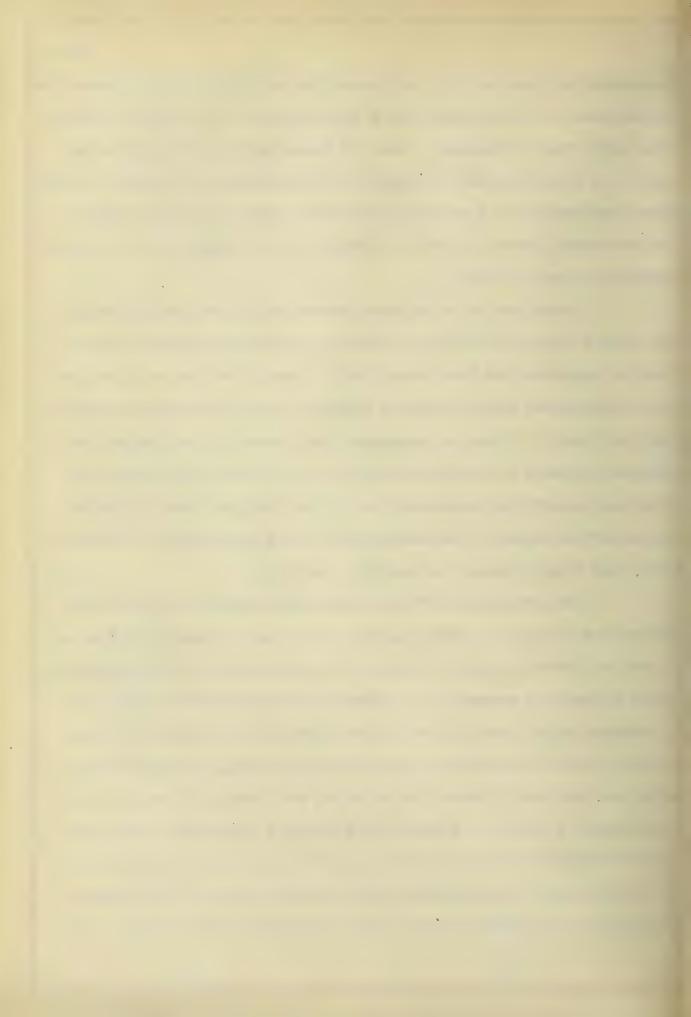
¹⁵⁹ Ibid., 270 ff.



introduced by Innocent IJI and resembled secular judicial procedure the accused and the accuser were questioned by the judge who might also call other witnesses. Both of these methods of trial were used to a slight extent in England but generally in connection with minor proceedings; it was upon purgation that the English ordinaries depended almost entirely to establish the guilt or innocence of clerks accused of crime.

Purgation as it existed according to the canon law was far from a simple matter, and several preliminary steps, some of them as important as the formal trial itself, had to be taken before the accused was allowed to present himself before the ecclesiastical court: first a commission was issued to the person or persons who were to superintend the trial; after this there was often an ex-officio investigation of the charges; then a proclamation of the date of the hearing and the place where it would be held, and finally came the purgation proper.

The commissions which were issued authorizing the purgation and making due arrangements for it were prepared by the ordinary or by the persons acting as the guardains of the spiritualities in case of vacancy. The form of these documents was fixed by custom; after the salutation the name of the person to be admitted, the time and place of his secular trial, the justices who presided, and the offense for which he was convicted as far as is possible in a court of laymen are carefully described; then comes the invariable statement that he has been delivered to the prison of the ordinary in accordance with the privilege of Holy Church followed by the order to take the preliminary steps for his pur-

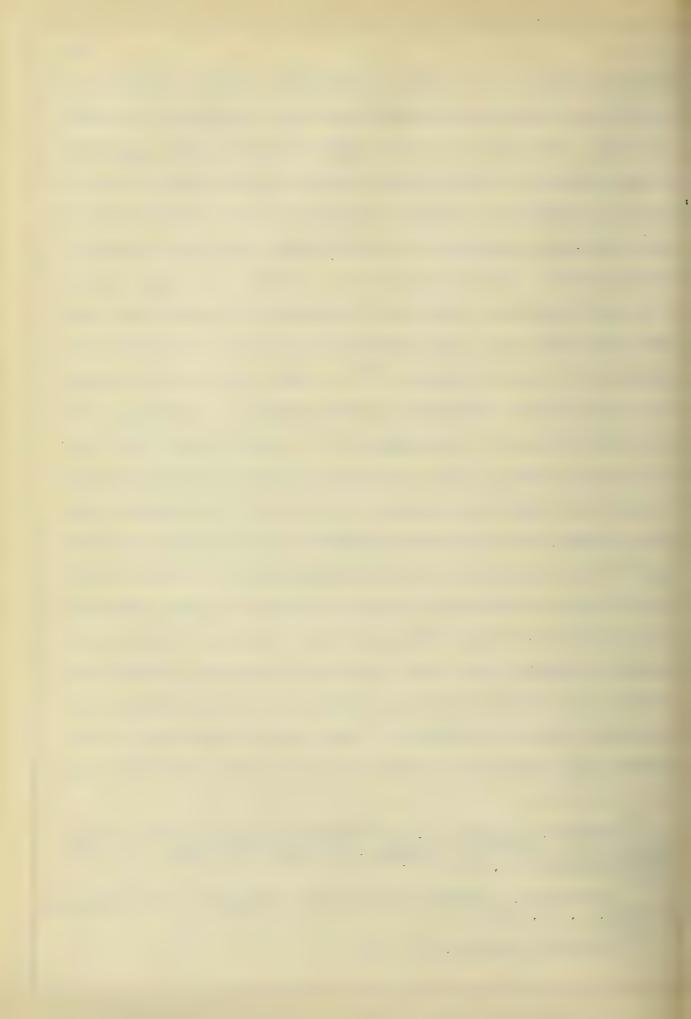


gation: sometimes it is further ordered that if these result favorably for the accused the commissioners are to proceed to the formal trial. The general rule was that the men who were appointed as commissioners for the inquiry and proclamation were allowed to carry the proceedings through to the end. 160 This rule varies in cases where the purgation is to take place before the chapter or the consistory. In such instances the commissioners are ordered to conduct the inquiry and make the necessary proclamations, and after certifying that they have carried out these steps they are relieved of further obligation. 161 In some instances two commissions are issued: Wykeham's register presents a case wherein the preliminary steps for the purgation of a clerk charged with the theft of two yards of linen were taken by the archdeacon of Surrey who then delivered the prisoner to the prior of Winchester, the abbot of Hyde, and the bishop's official for subsequent proceedings. The persons to whom the commissions were given were not chosen from any particular rank of churchmen, nor from those holding particular offices: officials, deans, subdeans, canons, and vicars all shared in the work; sometimes even minor officers were called upon in these matters and commissions to the officials of archdeacons are not infrequent. There was no regularity in the number of men appointed for each case nor in the number of cases

¹⁶⁰ Giffard, Register, I, 3; Stapeldon, Register, 156; Salopia, Register, 147; Stafford, Register, 331; Reg. Pal. Dun., III, 507; Beverly Minster, II, 76.

Grandisson, Register, 495; Salopia, Register, 470; Memorials of Ripon, I, 42, 140.

¹⁶² Wykeham, Register, II, 184.



to which each commission might attend. 163 It seems also that there was no rule which limited the territory from which the appointed judges might be chosen: a commission appointed by Bishop Grandisson in 1328 consisted of the precentor of the church of Exeter, the rector of Cornwodie, and a canon of York. 164

to make inquiry and proclaim the coming purgation contains the reasons why the man is to be admitted. 165 It was the customary thing for the ordinary to allege that the man who was to be given the opportunity to purge himself has "humbly petitioned" for that privilege or that he has expressed himself as "willing" or "eager" to "canonically purge himself" should "we deem him worthy of receiving any purgation. "166 Often the explanation goes farther saying that the clerk has been the victim of malice or hate, that he is not generally suspected as a wrongdoer, or that he is innocent of the crime of which he is accused. 167 Sometimes the ordinary to make inquire to make it is incocent of the crime of which he is accused. 167 Sometimes the ordinary to make inquire the ordinary that the ordinary to make inquire the ordinary that the ordinary to make it is not generally supported the ordinary to make it is not generally the ordinary to make it is not generally the ordinary to make it is not generally the ordinary that the ordinary the ordinary that the ordinary the ordinary that the ordinary that the ordinary the ordinary that the ordinary the ordinary that the o

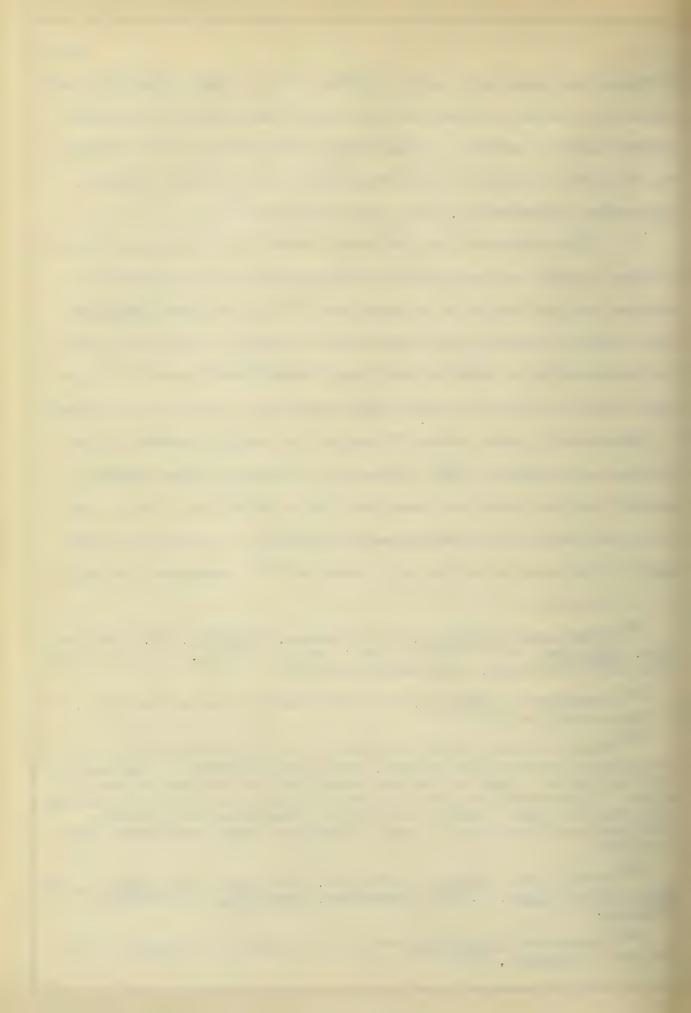
Grandisson, Register, 478; Tykeham, Register, II, 184; Salopia, Register, 147. In the first instance, three, in the second, two, and in the last, four were appointed.

¹⁶⁴ Grandisson, Register, 478. Where several were appointed, two or three might serve.

This attitude seems peculiar if it is remembered that from the point of view of the church, the clerk delivered to an ecclesiastical prison, came not as one convicted but as one accused of crime. It is possible that this may be explained simply by saying that the churchmen, confronted by the actualities of previous trial and confiscation of goods by secular court, abandoned legal fictions.

¹⁶⁶ Grandisson, Register, 478, 495, 1165; Reg. Pal. Dun., I, 58; Memorials of Ripon, I, 140; Stapeldon, Register, 3; Stafford, Register, 331.

¹⁶⁷ Grandisson, Register, 445, 1165; Stapeldon, Register, 3; Stafford, Register, 331.



nary lays aside the pleas of the prisoner and simply tells his officers that the order for purgation is given because he is "desirous of extending mercy." 168 Some of the commissions exhibit a desire on the part of the bishops to do real justice, or possibly show the result of the threatening attitude of the secular power which led Archbishops Peckham and Islip to enjoin their suffragans not to be too lenient in admitting clerks convict to purgation. 169 In many instances the prelates express the wish that care be taken in admitting the clerks to their formal trial. Grandisson says: "It is necessary that purgation should not be conceded too readily nor made too easily, lest it be so unreservedly granted that other clerks become bold and daring in the commission of crimes."170 Stapeldon "wishes neither to detain this clerk against right nor wrongfully release him. "171 and Bishop Salopia "desires to do full justice in the matter but at the same time to act deliberately lest our authority be soiled."172

It was this attitude of the ordinaries that led them to direct their commissioners to make careful inquiries into the life of the accused clerk before admitting him to purgation. Some of these orders were very general in character either ordering the

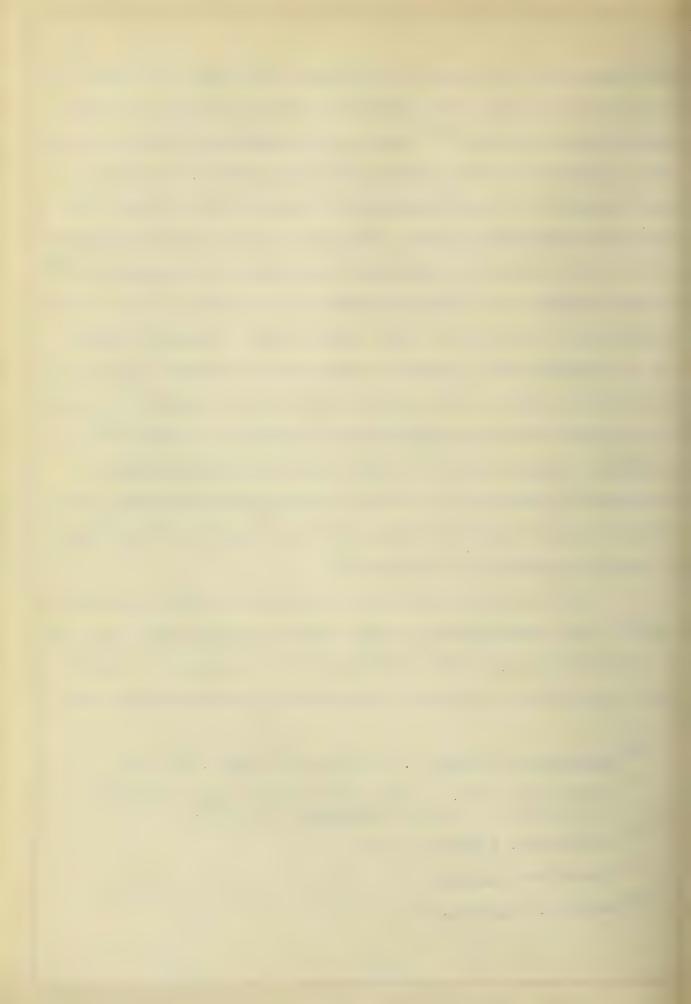
Memorials of Ripon, I, 140; Reg. Pal. Dun., III, 508.

Archbishop Islip, in 1351 set forth the exact steps to be taken in every case. Wilkins, Concilia, II, 13 ff.

¹⁷⁰ Grandisson, Register, 1165.

¹⁷¹ Stapeldon, Register, 3.

¹⁷² Salopia, Register, 470.



inquisition to be made in regular form 173 or providing that it should be made by trusty men, 174 but this fact does not appear to have affected the thoroughness with which they were made. The report of an inquiry made among trustworthy persons of the diocese of Exeter who knew the accused well says that "from the day of his birth and especially at the very time when he had been charged with the said offense [an unnamed felony] and thrown into prison his life and reputation had been uniformly good." 175 The usual method was to prescribe definitely that the "reputation, character, conversation, morals, and good fame of the clerk convict be inquired into" as well as the opinion of reliable people as to his innocence or guilt of the specific crime which was charged against him. inquiry was made of laymen as well as churchmen and was to be conducted in the place of his birth and at the place where the crime was committed if this was possible. 176 Bishop Grandisson added a provision that the friends of the accused should not be included among those who were questioned upon inquisition. 177 Bishop Salopia of Bath and Wells gave minute directions for the conduct of the inquest to his commissaries: "We enjoin you by virtue of your obedience to summon a sufficient number of trusty men before you and make diligent inquity from them upon their oaths concerning

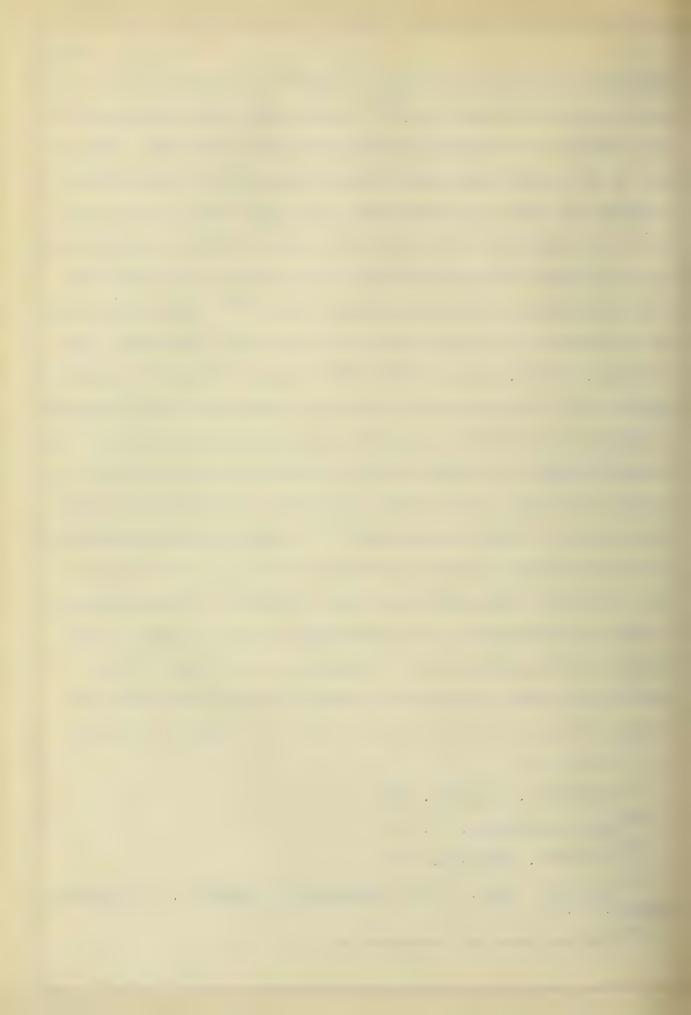
¹⁷³ Stapeldon, Register, 477.

¹⁷⁴ Beverly Minster, II, 76.

¹⁷⁵ Stafford, Register, 331.

¹⁷⁶ Reg. Pal. Lun., I, 462; Memorials Of Ripon, I, 140; Beverly Minster, II. 76.

^{177 &}quot;Amicis suis non praemunitis."

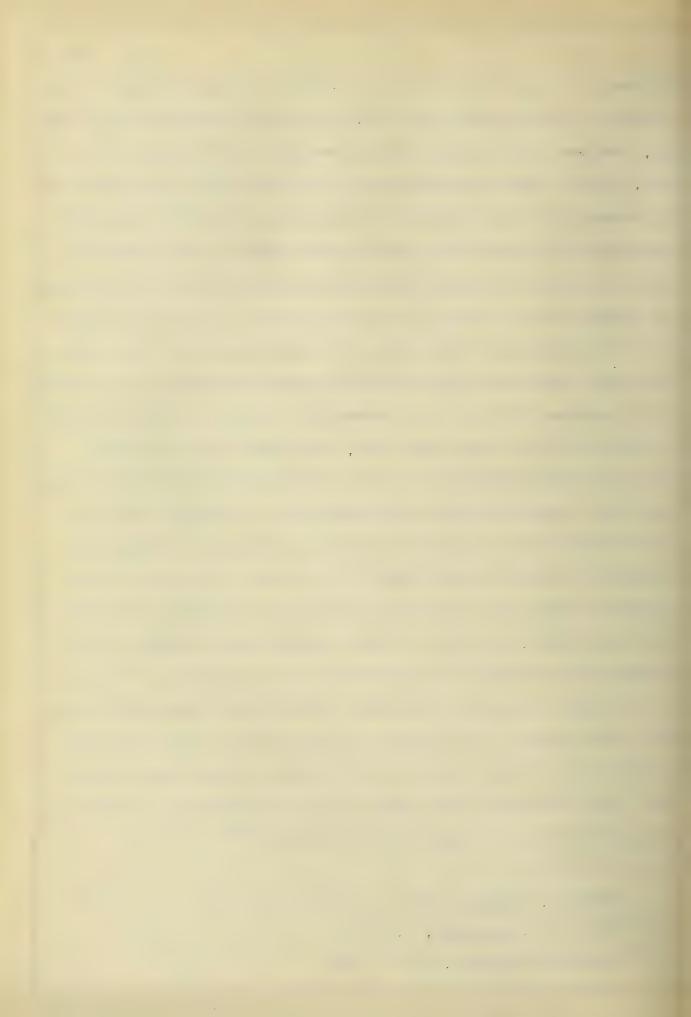


the truth of the matter with which John is accused, whether he was defamed of this by many or by few, or because of malice or by hearsay, whether he was accused out of zeal for justice or out of enmity, and all other circumstances of the said affair upon which the easy admission or the refusal of purgation depend."178 After the beginning of the thirteenth century this seems to have been the real trial and its severity depended upon the feeling of the bishop, the honesty of his officers, and the position of the accused just as did the nature and the length of his imprisonment. Good intentions like those shown above could be easily vitiated by the action of the persons to whom it was addressed. Whether for this reason or for one of the others mentioned, the number of inquisitions which resulted unfavorably for the clerks convict seems to have been very few. Bishop Stapeldon was accustomed to provide that the clerk who was found guilty by inquisition should be returned to prison for the rest of his life. 179 but there is no case in his register to show that this severity was ever necessary. Now and then cases arose, however, in which purgation was refused to the accused as the result of the finding of the inquistion; the register of Bishop Wykeham of Winchester exhibits two instances of this kind. The return in such cases tells the story: the inquisition was held at a certain place before a certain officer and it was found that the charge was a grave one by the testimony of credible persons who were not enemies of the accused. 180

¹⁷⁸ Salppia, Register, 470.

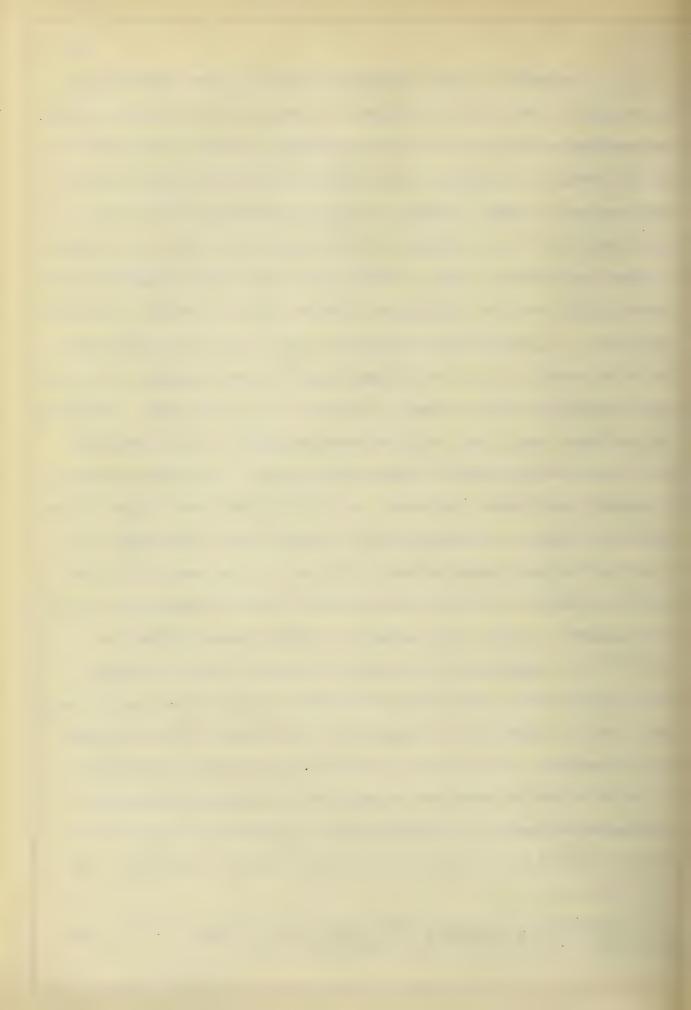
¹⁷⁹ Stapeldon, Register, 3, 477.

¹⁸⁰ Wykeham, Register, II, 90, 305.



According to the commission issued by the ordinary, if the results of the inquisition were favorable to the accused clerk. the commissioners were directed to proclaim the day and place set for the formal trial so that any person who might be so disposed could appear and make objection to the admission of the clerk to his purgation. This proclamation was generally made by the person to whom the commission was directed and to the rural deans who had jurisdiction over the localities nearest the place where the crime took place. Instructions were always given that the proclamation was to be made publicly and solemnly and the announcement was generally made from the churches on Sundays and feast days. Sometimes instructions were given that the arrangements for the purgation should also be announced in the market places. The form of announcement was always the same: a certain clerk convict was to be admitted to make his purgation at a certain time and place; all those who for any reason wished to object to the purgation or say anything against the man on trial should present themselves; if no one appeared to object the purgation would proceed in regular form. 181 It would seem that secular justices tried to extend their jurisdiction over clerks delivered to the ordinaries by sending a man to object to the purgation in the name of the king and also by setting the time and place for the ecclesiastical trial. The abbot of Westminster was charged with contempt because his archdeacon proceeded to the purgation of criminals thus delivered without waiting for the day fixed by the judges. The abbot was

¹⁸¹ Stapeldon, Register, 157; Memorials of Ripon, I, 42; Reg. Pal. Dun., I, 462; Grandisson, Register, 495.

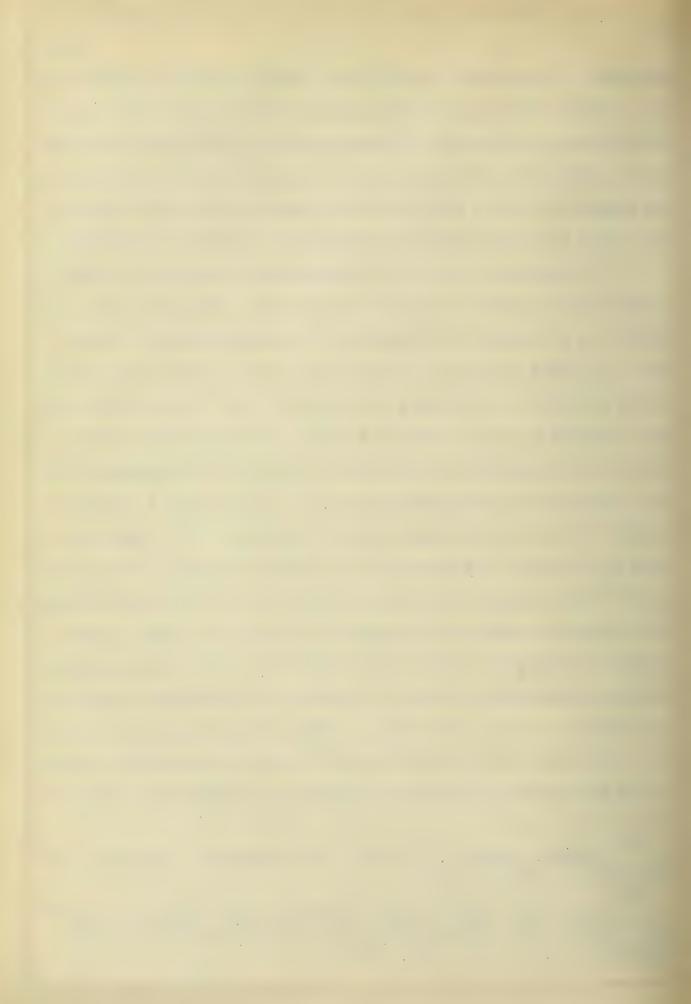


acquitted in parliament on the ground that an attempt of this kind was a clear violation of ecclesiastical liberty since the fixing of the time and the place of purgation were matters which could be done by the church officials alone. The time set for the purgation was generally about a month after the date of the order providing for it and the place chosen was generally a church or churchyard.

The final step in the ecclesiastical trial of a clerk convict was the formal ceremony of purgation, which was carried out before the ordinary or officers whom he commissioned for the purpose. In times of vacancy it seems that the charters and consistories delighted in attending to this duty which the prelates were only too glad to pass to some one else. If the officers who presided at the purgation were other than those who had conducted the trial through its preliminary stages, the latter sent a certified account of their proceedings to their successors. 182 Upon the receipt of this, all was ready for the purgation proper. The accused clerk was brought before the ecclesiastical tribunal and inquiry was made whether anyone was present who wished to oppose his admission to purgation: if no one responded the clerk then announced himself as ready and willing to proceed to the trial and begged to be allowed to do so. According to Bishop Stapeldon's instructions the clerk would have been sent back to prison if anyone had appeared who with good and sufficient reasons had opposed the purgation,

Wykeham, Register, II, 120, 293; Grandisson, Register, 452; Memorials of Ripon, I, 140.

¹⁸³ The numbers purged at a time varied. The register of Bishop Stapeldon shows that in 1309 nine clerks were purged at one time, in 1310 one, in 1311 two, in 1315 three, and in 1315 six. Register, 463, 481, 481, 489, 508.



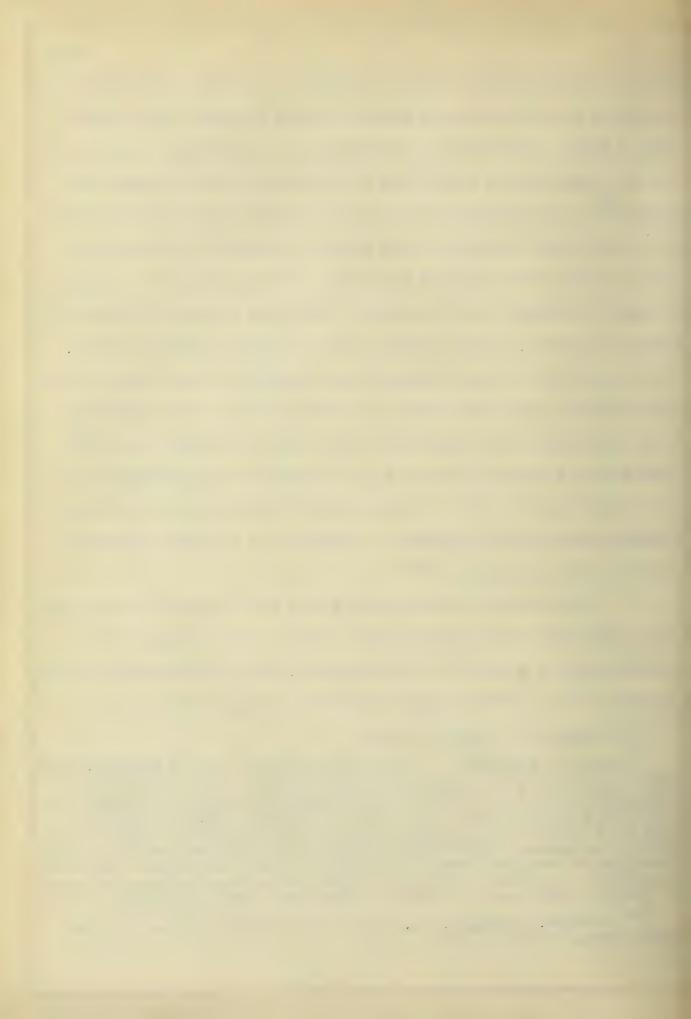
but no instance has been found where this occured. The process of purgation was the world-old method of oath helping: the accused made a solemn oath that he was innocent of the charges against him, and his compurgators swore that they believed that he spoke the truth. The account of this process given by some of the judges at a later time differs in some respect from what is found by a study of the ecclesiastical documents. The dictum of the justice in Rex v. Burridge is as follows: "The trial was held before the bishop in person, or his deputy, and by a jury of twelve clerks. and there first the party himself was required to make oath of his own innocence: next there was to be the oath of twelve compurgators, who swore that they believed he spoke the truth; then witnesses were examined on oath, but in behalf of the prisoner only; and lastly the jury were to bring their verdict upon oath, which usually acquitted the prisoner, otherwise, if a clerk, he was degraded or put to penance. "185

The number of compurgators that were required in a given case varied with the gravity of the offense, the custom of the jurisdiction in which the trial was held, and the importance of the accused. In 1209 the pope orders the bishop-elect of Ely to

¹⁸⁴ Grandisson, Register, 1164.

None of the registers mention the examination of witnesses nor of jury trial and it is probable that the common lawyer confused the process of purgation with that of inquisition which was adopted in some cases rising within the church. Fournier describes the process as follows: "La purgatio consiste essentiellement dans la prestation de serment faite par le prévenu, qui affirme sur les saints Evangiles n'avoir pas commis le délit qui lui est imputé. Des compurgatores .. déclarent en même temps qu'ils tiennent pour vérdique le serment prêté par le prévénu." Fournier, Les Officialités, 266.

¹⁸⁶ Wilkins, Concilia, II, 148, 299. See the oath of William Longchamps, above, p. 81.



purge himself with five compurgators of his own rank. 187 In 1220 and again in 1253 he complains that Irish thieves in the province of Cashel are required to purge with thirty oath helpers while the English offender is required to have but six. 188 In another Irish case the pope orders the archbishop of Armagh to admit a certain priest to purgation with seven compurgators because when he had been brought before an archdeacon on the charge of homicide the priest had been required to produce fifty-eight priests of his diocese, who spoke the Irish tongue, as his compurgators; and because he had shown to the pope that he had been suspended from his functions since, as there were not so large a number of Irish priests in the diocese, he had failed to make his purgation. 189 In later times Archbishop Peckham orders the bishop of Bangor to admit to purgation with twelve of their own rank the clerks who had committed many crimes, among them the betrayal of David, brother of the prince of Wales, who was afterward put to death. 190 The register of Durham shows that Adam de Mapath was allowed to purge himself "by fourteen priestly hands and the hands of three clerks." 191

The case of John Bourkere, a clerk of the diocese of Winchester, establishes a record for complexity: John was accused of the theft of a set of amber beads, ten silver pennies, three pairs of sheets, and eighteen ells of linen cloth from one house,

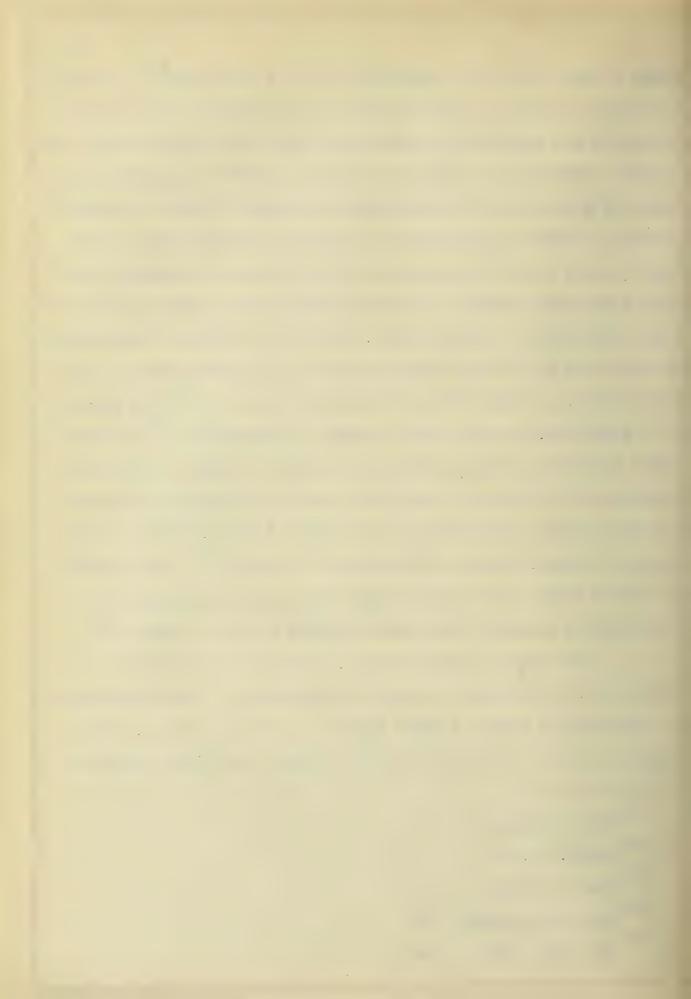
¹⁸⁷ Papal Letters, I. 34.

^{188 &}lt;u>Ibid</u>., 75, 283.

¹⁸⁹ Papal Letters, I. 48.

¹⁹⁰ Reg. John. Peck., 786.

¹⁹¹ Reg. Pal. Dun., I, 462.



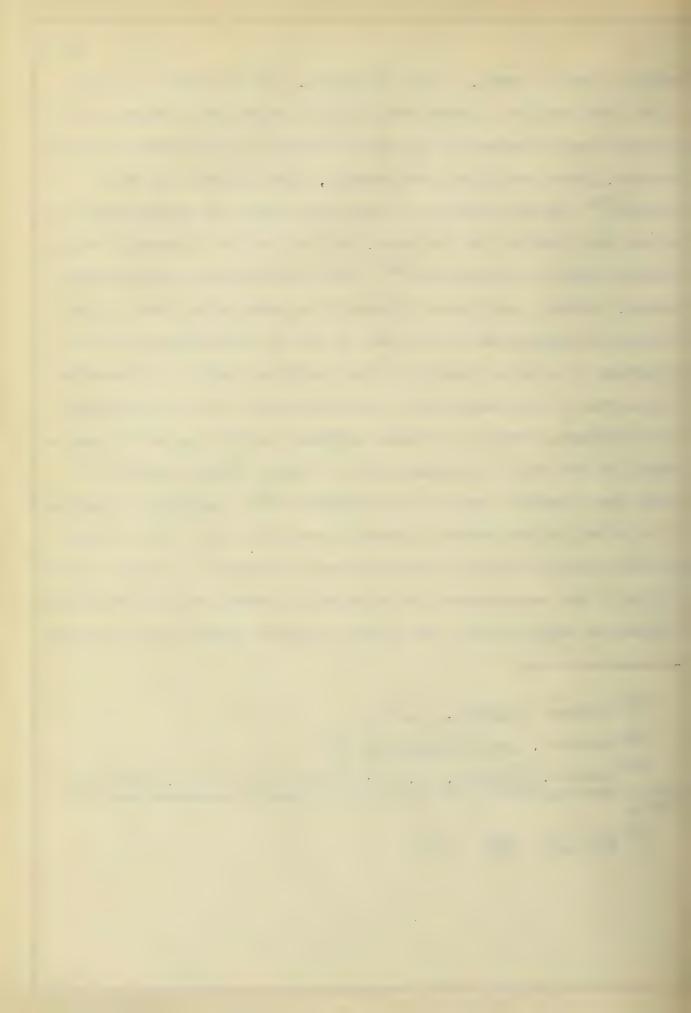
and of a set of beads, a pair of sheets, and five ells of linen cloth from another. After remaining in prison for five years he was admitted to purgation and was released upon the oaths of eight rectors, three chaplains, two deacons, four friars, and four In the majority of cases the number of compurgators required was fixed by the ordinary, but the choice of persons was apparently made by the accused. 193 This procedure was occasionally varied, however, and Bishop Wykeham's register shows that in one instance he appointed sixteen men to act as oath-helpers in the purgation of a horse thief. 194 The prelates sometimes interested themselves in the character of the men chosen to act as compurgators: Richard, bishop of Durham, ordered the official of the archdeacon to see that the compurgators of three clerks accused of theft are "faithful men and not suspected." 195 Archbishop Peckham. in a letter to the bishop of Norwich complaining of the attitude of the bishop's officers in the matter of purgation, objects to the action of the commissaries in refusing to accept men who are poorly dressed as compurgators, "as though a nuptial dress were necessary

¹⁹² Wykeham, Register, II, 113.

¹⁹³ Fournier, Les Officialités, 266.

Wykeham, Register, II, 279. This without doubt, made purgation more difficult than when the customary procedure was followed.

¹⁹⁵ Reg. Pal. Dun., I, 58.



at a trial."196

returned to prison he would probably be allowed another opportunity. Drokensford's register gives an instance wherein two clerks who had failed in their first attempt were allowed to try a second time. 197 A still more flagrant case is exhibited by Bishop Wykeham's register: John Wardecorps accused of burglary, horse stealing, and common theft was first permitted to attempt his purgation July 8, 1369; failing then, another commission was issued February 1, 1370, with no better success; the final attempt was delayed until January 20, 1379; but the result of the inquest of office was again unfavorable and Wardecorps was denied the opportunity of attempting purgation and disappears from view. 198

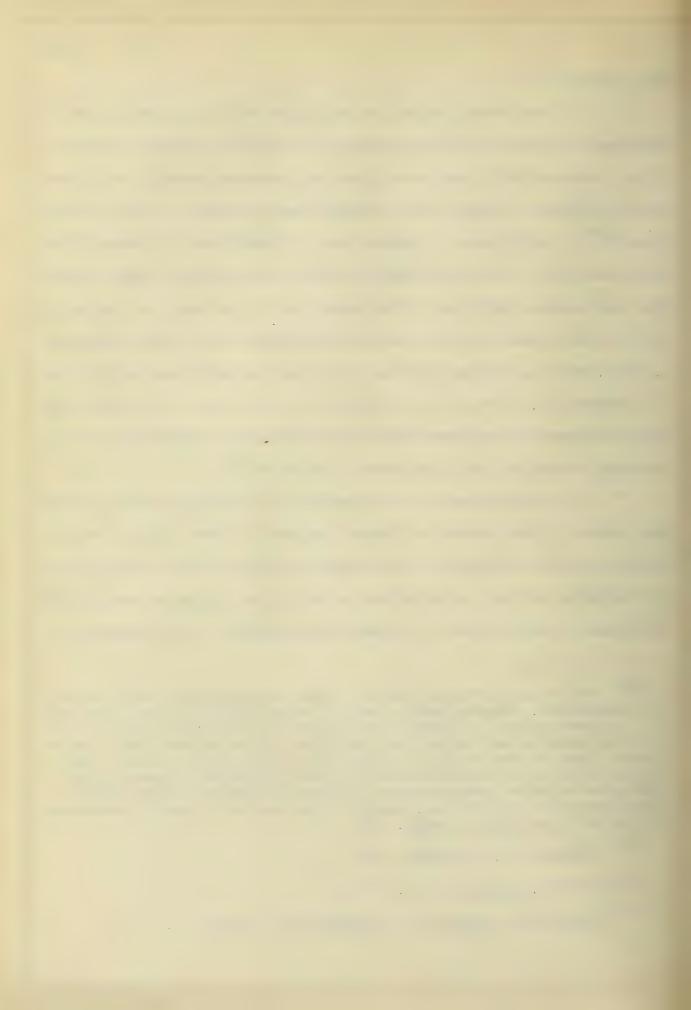
If the accused clerk succeeded in clearing himself before the courts of the church, a formal judgment to that effect was announced by the ordinary or his deputies and was also inscribed on the register of the jurisdiction in which the purgation was made. Sometimes a certificate of purgation was given to the accused to

[&]quot;Cum enim plerumque quidam eorum de criminibus ecclesiasticis accusantur, praenominati clerici vestri multipliciter eos vexant. Primo quidem in dicendo eis purgationem onerosam nimis, et in locis remotis ad viginti vel triginta miliaria eam fieri demandantes, quod ad hoc videtur tendere per effectum, ut vexationem suam ac testium suorum pecuniae redimant non modica quantitate. Praeterea si inter compurgatores aliquis appareat pauper habitu, quasi suspectus repellitur, quasi purgationi sit vestris necessaria nuptialis." Reg. John. Peck., 178.

¹⁹⁷ Drokensford, Register, 189.

¹⁹⁸ Wykeham, Register, II, 90-92.

¹⁹⁹ Stapeldon, Register, 3; Memorials of Ripon, I, 42.



the effect that he had satisfactorily established his innocence and was therefore restored to his former good fame. In case he failed the punishment as noted above was generally imprisonment. The early practice was to assess a physical penance: Philip de Brois was whipped: and there is one recorded instance in which the convicted clerk was branded. If the crime was a grave one

the prisoner might be deposed or degraded.

The penalty of degradation was the one which the secular powers expected would be imposed on clerks who failed to make their purgation, but the church was loath to impose so The archbishops of York seem to have been severe a sentence. an exception to this general rule. Archbishop Romanus in 1295 degraded five clerks, four of whom were accused of burglary and one of horse stealing. His successor, Archbishop Corbridge, degraded eight clerks in 1302 and five more the following year. Archbishop Greenfield in 1310 degraded nine offenders. It is significant that not one of these offenders had proceeded in orders farther than the first tonsure. Archbishop Giffard's regis-

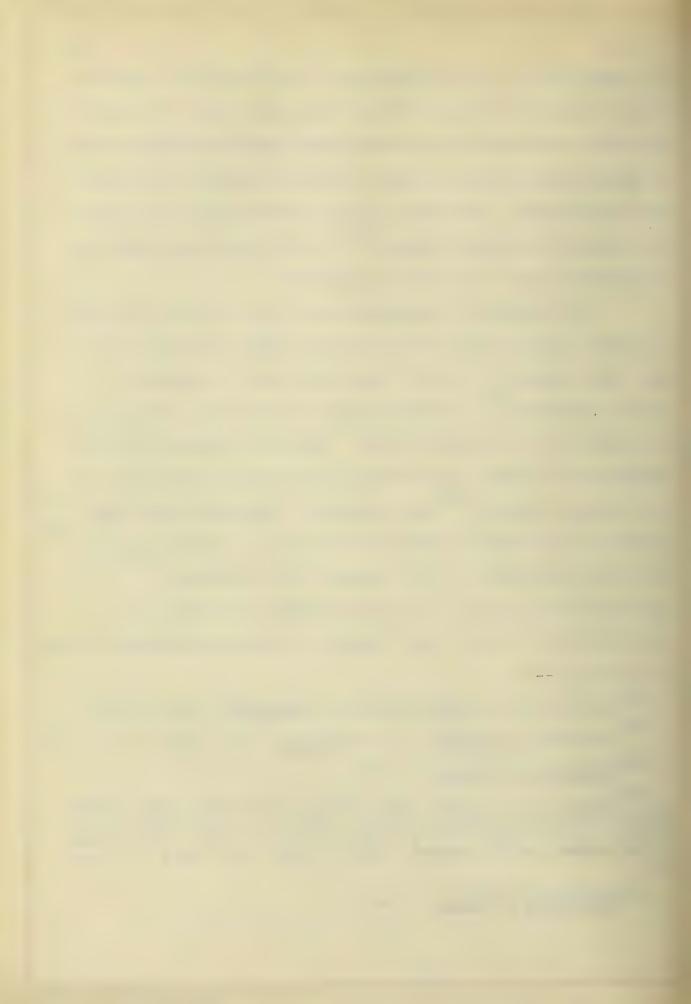
Fitz Stephen, Vita (Robertson, Materials, III, 45-46).

²⁰¹ Bracton, De Legibus, II, 299; Fleta, bk, I, chap. 34, ac. 33.

Memorials of Ripon, II, 21.

²⁰³ Ibid., 41. In the first instance the clerks were degraded for the following crimes: two for murder, one for theft from a church, one for theft from a fulling mill, and four for burglary; in the second one for murder, one for theft, and three for burglary.

Memorials of Ripon, I, 64.



ter shows that he assisted his brother Thomas, bishop of Worcester, in the degradation of a subdeacon, but not a single degradation of a man in priestly orders appears. It is also worth noting that not one of the men degraded suffered because he had failed to make his purgation or because he had been found guilty by ecclesiastical inquisition; all had confessed their crime.

spectacular. The criminals were assembled before the ordinary in the church; each one was addressed by name and ecclesiastical title, his offense was recited, and a short lecture was read to him upon his evil life; then the sentence of degradation was pronounced. Archbishop Romanus said to the culprits before him:

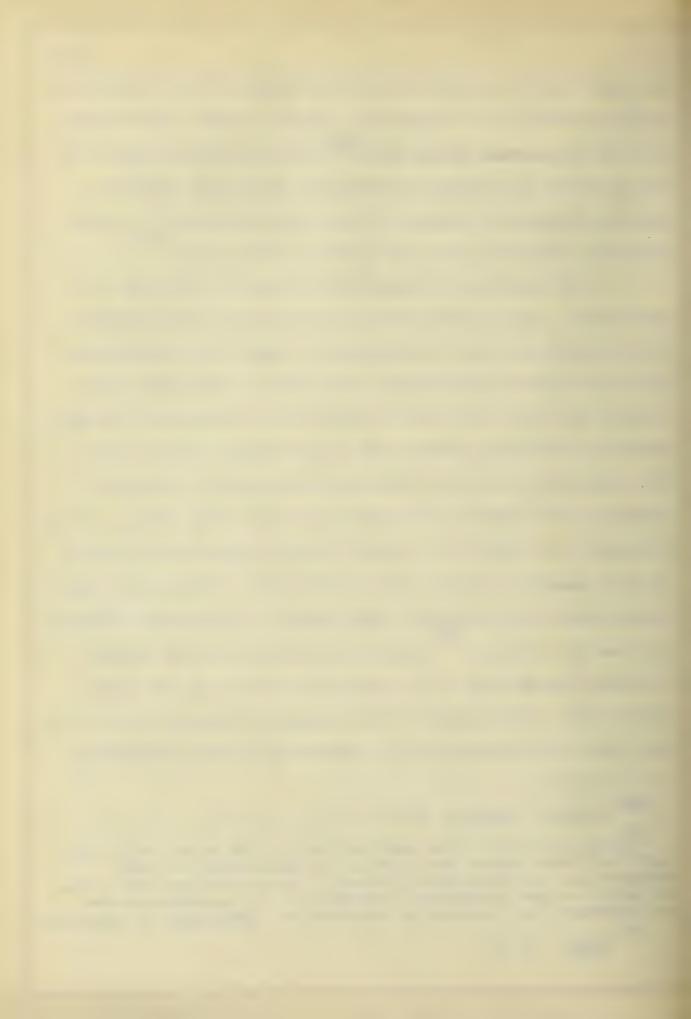
"We, perceiving the crimes which you have committed and which redound to the scandal of the whole clerical order, wish to leave no example to others to do similar acts by allowing you impunity for your damnable actions. Your confessions .. having been made in our courts, we in Christ's name finally and definitely degrade 207 you from your offices."

After the sentence had been passed the guilty clerks were taken outside the church for the actual degradation. At Ripon this final ceremony was carried out at the west door of the church and the archbishop in full pontificials

²⁰⁵ Giffard, Register, 242.

The recorder of the degradations of 1302 says: "And note that they stood before the court of the archbishop without shackles and confessed their crimes." It appears that the ordinary held a signed confession from each of the malefactors when he pronounced the sentence of degradation. Memorials of Ripon, I, 65.

²⁰⁷ Ibid., II, 21.



executed the sentence saying: "By the authority of God the

Father Omnipotent, the Son and the Holy Spirit and by my own I

tear from you your clerical habit and depose, degrade, dispoil,

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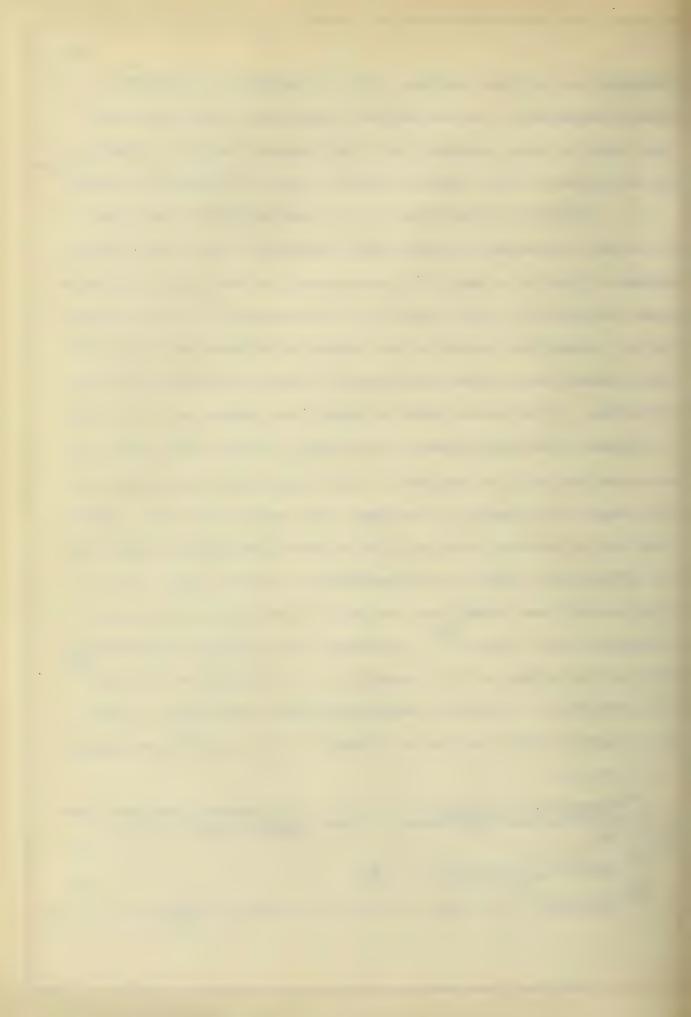
and strip you of all orders, benefits, and privileges of clergy."

With the proceedings in the ecclesiastical court at an end and the accused clerk either restored to his good fame or degraded from his orders, it is necessary to turn to the temporal power to learn the final result of the process. If the clerk has failed to make his purgation his goods which were taken into the king's hands when he was convicted by inquest of office will be forfeited. If he holds lands in chief they remain with the king to dispose of as he pleases; if however, he holds them from some one else they will be returned to his immediate lord after they have been in the hands of the king for a year and a day. Aside from the forfeiture there will be no other punishment either for the offense for which he was degraded or for any other crime which he may have committed previous to the time when he was stripped of his orders. If however the clerk has successfully made his purgation all his property is to be restored to him. This restoration was made immediately upon certificate of purgation until after the time of Edward I; but by 1309 the king had

Memorials of Ripon, I, 35, 64. All degradations were made in these words save one where the word psalmistatus was used. Ibid., 22.

²⁰⁹ Bracton, De Legibus, VI, 301.

Britton, bk. 1, chap. 5, sec. 3; Wilkins, Concilia, II, 116.



taken the view that the return of the clerk's goods was an act of grace, and in spite of the objections of the clergy refused to allow the purged clerk to reënter into his possessions without 211 letters containing the royal permission.

The letters sent from the ordinary announcing the purgation varied somewhat in form. The usual method was to make a statement of the simple fact: John Doe, a clerk of our diocese, accused of a certain crime and delivered to us in accordance with the privileges of the church has made his purgation; "therefore we beg that his goods and possessions be returned to him out of 212 your hands." Sometimes, however, the bishops went further and covered every step of the proceeding in the ecclesiastical court and added a prayer that "his goods movable and immovable be returned to him without diminution."

At times the churchmen met with difficulties in regaining their possessions. In some instances the clerk had been in
prison for many years and it was necessary for the king to ask
that the bishop search his registers for the records of the case
and certify them to the chancery before settlement could be made.

On other occasions similar orders were sent to the treasurer to
also discover the enrollments filed in chancery. But this was not

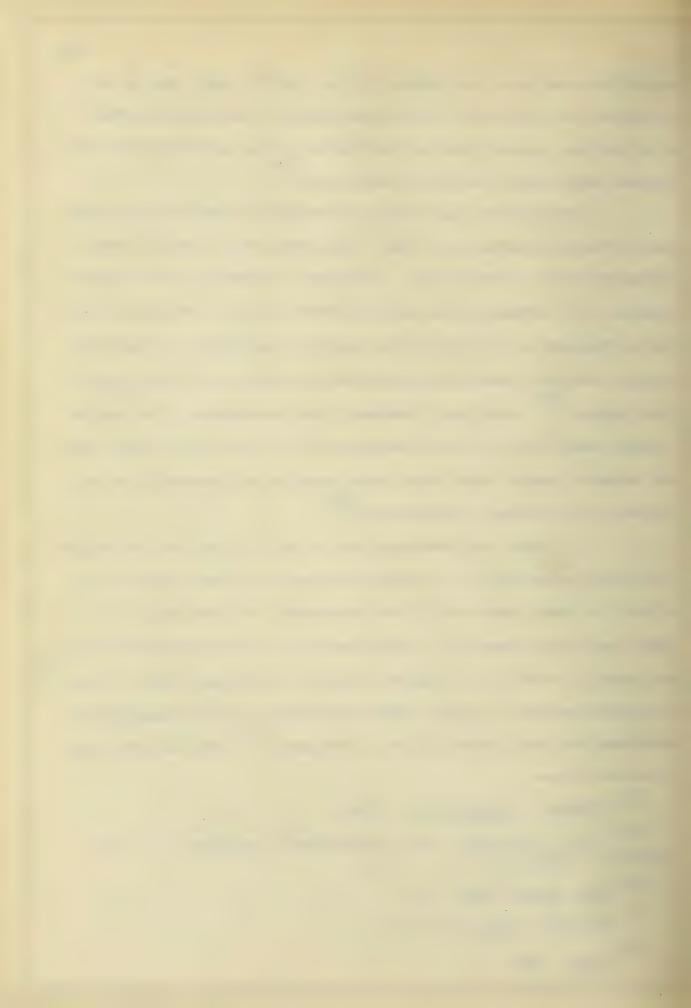
²¹¹ Wilkins, Concilia, II, 318-19.

²¹² Quivil, Register, 444; Drokensford, Register, 28, 195; Stapeldon, Register, 3.

²¹³ Reg. John. Peck., 919.

²¹⁴ Wykeham, Register, II, 568.

^{215 &}lt;u>Ibid.</u>, 574.



the only impediment to speedy adjustment. In 1314 a purged clerk petitions the king for the restoration of his property alleging that it had been delivered to the bailiff of Reading who now declares that the petitioner never owned property in his A few years later another clerk begs royal assistance in securing his property which has not been delivered to him through the collusion of the sheriff and a certain knight to whom it was entrusted. It appears that the latter is in prison and the clerk is told to wait until he is set at liberty before he brings action. Sometimes the persons to whom the property had been delivered made legal resistance to the return and at other times they stooped to even lower practices. The sheriff of Kent returned a writ to Edward II begging that he be excused from returning the chattels of a clerk unless he had an order from the justices; and the king sent letters to them commanding that the sheriff be called and ordered to make the delivery.

A technical question arises over the property of clerks who die while waiting purgation in the prison of the ordinary.

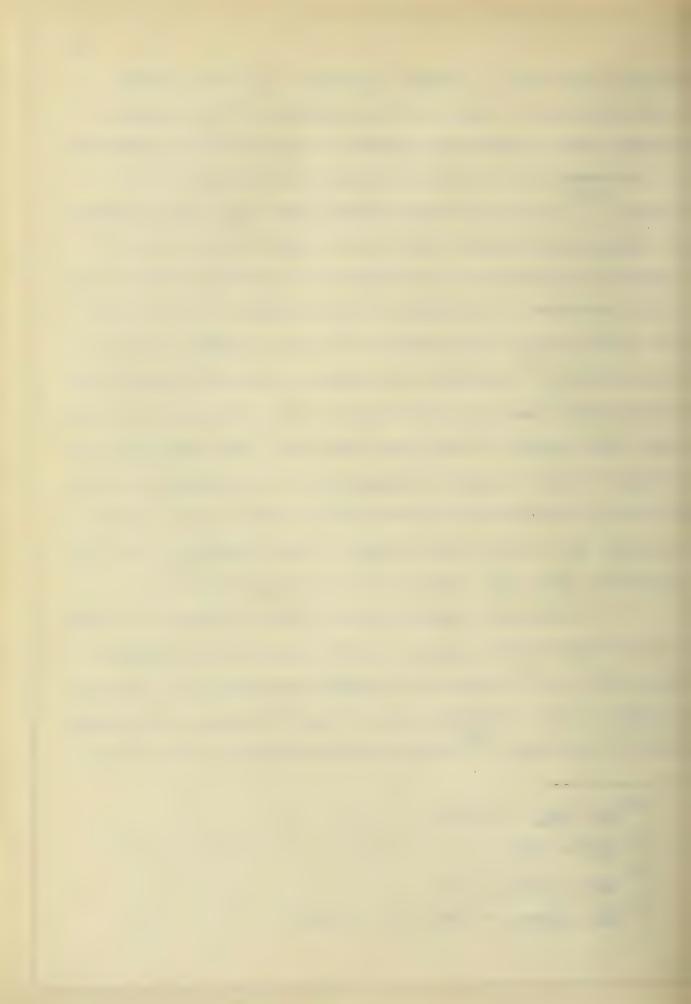
When such a thing occurred the secular power required a definite statement of the circumstances; at times it accepted the certificates of the bishop, but at others it demanded a view of the

²¹⁶ Rot. Parl., I, 330.

²¹⁷ Ibid., 396.

Eyre of Kent, I, 79.

²¹⁹ Rot. Claus., 22 Edw. III, p. 460.



body by the coroner, or if this could not be had, a regular in-This points to a fear of fraud on the part of the tempquest. oral officials and this attitude was not unreasonable for the rule was to deliver the property of the dead clerk to his heirs after it had been in the king's hands the customary year and a This must have been done upon the theory that the clerk had not been fully convicted but "only in so far as possible in a lay court." Sometimes however the state alleged other reasons for returning of the property. John Ken, a clerk, was brought before the suitors of a certain hundred on the charge of theft. He was convicted by inquisition and delivered to the prison of the archbishop of Canterbury where he died without having purged himself. When the justices came to Canterbury they put the suitors in mercy because they had made the inquisition without right and also had deprived Queen Margaret of the man's chattels which were valued at six shillings.

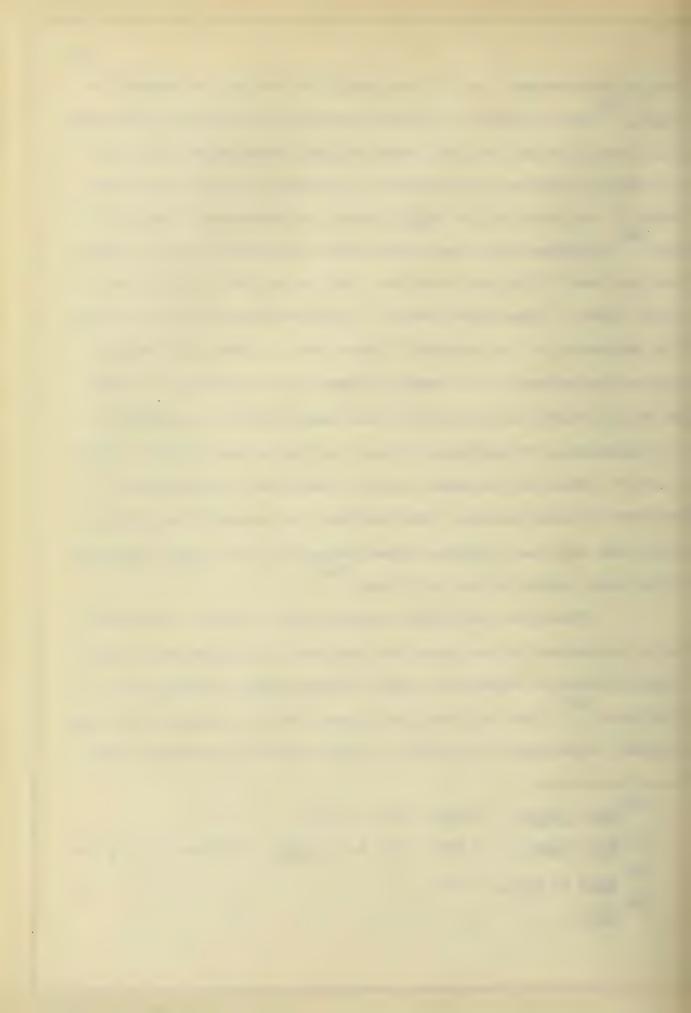
There was one ground on which the return of chattels
might be denied to the clerk who had made his purgation: "[the]
clerk as well as layman who shall abscond shall forfeit his
223
chattels." That this was the general rule is borne out by the
frequent statements in letters to sheriffs and escheators that

²²⁰ Rot. Claus., 17 Edw. III, p. 31.

²²¹ Rot. Claus., 13 Edw. III, p. 2; ibid., 39 Edw. III, p. 99.

Eyre of Kent, I, 70.

²²³ Ibid.



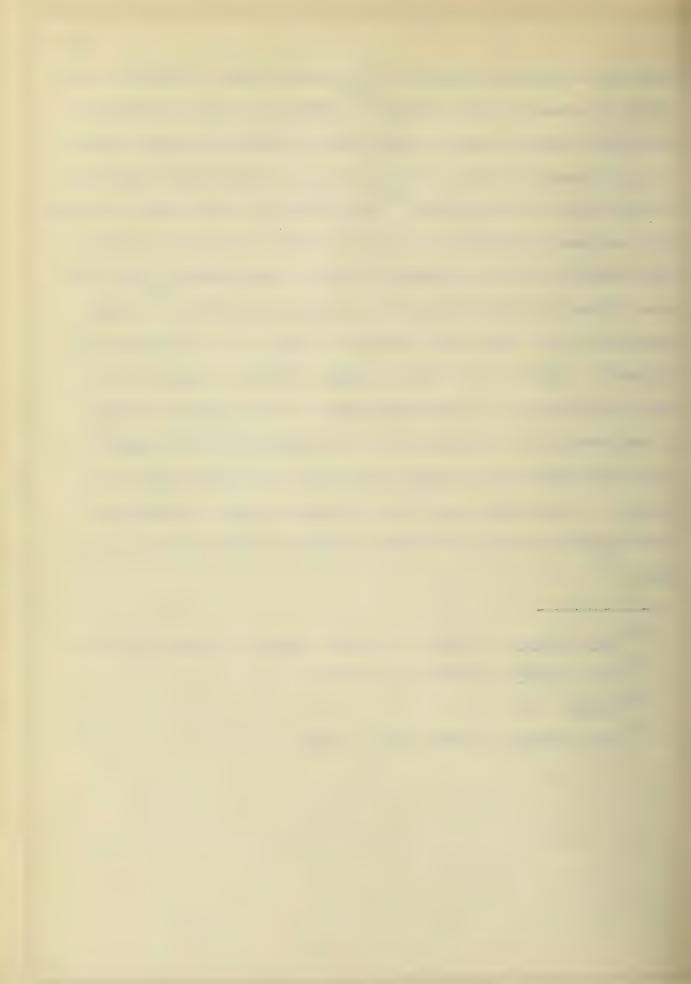
they are to deliver property to the purged clerk, "unless he made flight by reason of his felony." Edward I on one occasion relates that John de Tracy's goods have not been delivered because it is not known whether or not he fled, and he desires that they be delivered in either case: at another time he orders property that has been retained for the same reason delivered, since he has learned by "the testimony of Hugh de Cressingham, chief justice of the said eyre" that the accused did not fly. happened if the flight was proved is shown by the following enrollment: "Gift to the king's yeoman, Richard de Kent, of the whole forfeiture ... [of] Henry Horn, who for felonies whereof he was convicted, is committed to the prison of the [bishop] elect and confirmed of London according to his privilege as a clerk, ... which have come into the king's hands by reason of the forfeiture of the said Henry because he made flight as is said."

²²⁴ Rot. Claus., 24 Edw. I, p. 499; ibid., 17 Edw. III, p. 5.

²²⁵ Rot. Claus., 22 Edw. I. p. 454.

²²⁶ Ibid., 375.

²²⁷ Rot. Claus., 28 Edw. III, p. 151.



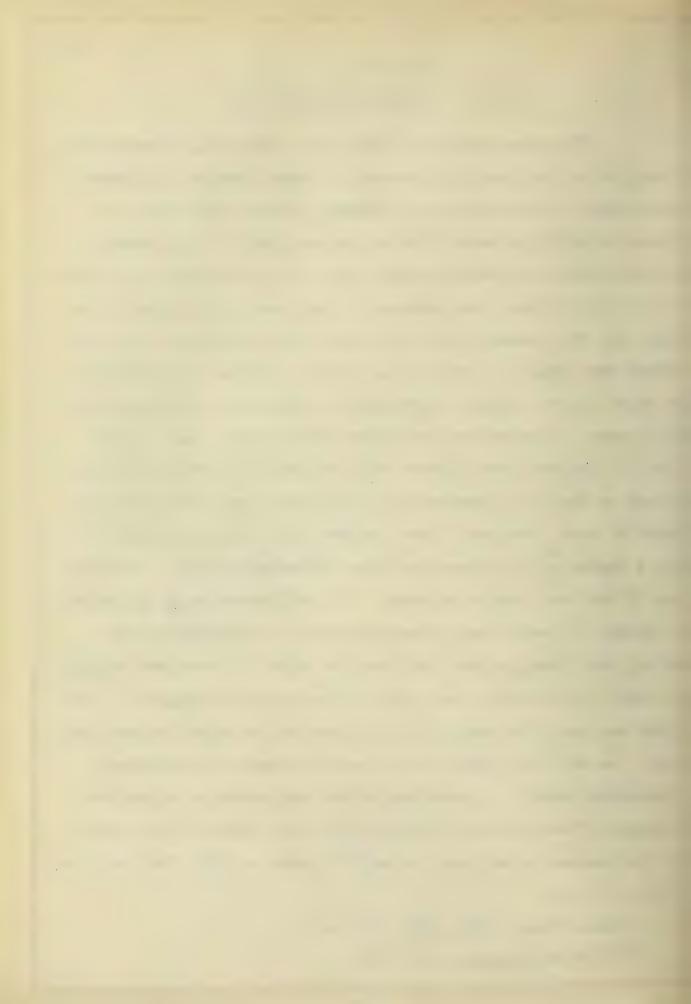
Chapter VII

BENEFIT OF CLERGY IN TRANSITION

The great revolt of 1381 did a great deal to weaken the clergy with the governing classes, for many priests and clerks were found in the ranks of the rebels. It was true that the church authorities were in no way in sympathy with the revolt and suffered to a greater extent than did the seculars as a result of it, but the fact that numbers of the lower clergy were in accord with the peasants could be taken as an indication that the church was unable to control its members. There is no evidence to show that the church interposed to save clerks who were captured in arms, or taken upon indictment for having a part in the revolt. Thirty-three priests were outlawed for their part in the attack on Bury St. Edmunds and it is likely that, had they been taken at once, they would have suffered the same punishment as did a number of the laymen who were connected with it. At least one of the Bury rebels suffered: "In 1382 there was a parliament in London, in which, upon the petition of the knights of the shire, John Wraw, priest, who was the leader of those who rebelled at Bury and Mildenhall was judged to be drawn and hanged." Another who paid the penalty for his part in the rebellion was John Ball. As early as 1365 this man had appeared as a disturber, "pretended priest ... preaching errors and scandals in manifest contempt of the Universal Church and to the danger of the souls of his hearers as well as his own." Again in 1381, "not a priest

¹ Thos. Wals., Hist. Ang., II, 63.

² Wilkins, Concilia, III, 64



but a repugnant schismatic," he had been denounced excommunicate by Archbishop Sudbury for "beguiling the laity with invectives, spreading scandals about our own person and other prelates, and using terrible language concerning our Holy Father the Pope."

The rebels found Ball in the archbishop's prison at Maidstone to which he had been condemned for life; he was released and became a leader of the rebellion, second only to Wat Tyler. After the failure of the revolt he was captured at Coventry and taken to St. Albans, "and there by the order of the king he was drawn, hanged, and quartered into four parts which were sent to four places in the kingdom and hung up." There was no effort on the part of the church to save this rebel against both church and state.

That the privilege of the clergy was being held in less respect is proved by two cases that arose early in Richard's reign. In 1384 a Carmelite friar appeared before the king bringing the information that the duke of Lancaster plotted treason. The king, dissuaded by the council from his intention of ordering the execution of the duke, ordered the friar delivered into custody while the steps to be taken were decided. The friar was taken out of the hands of his keepers while on the way to prison and was horribly tortured, but the emissaries of the duke failed to wring from him any explanation of his intentions. He was returned to

Wilkins, Concilia, III, 153

⁴ Hen. Knight., Chron., II, 131.

⁵ Ibid., 150; Ran. Hig., Polychron., IX, 7.



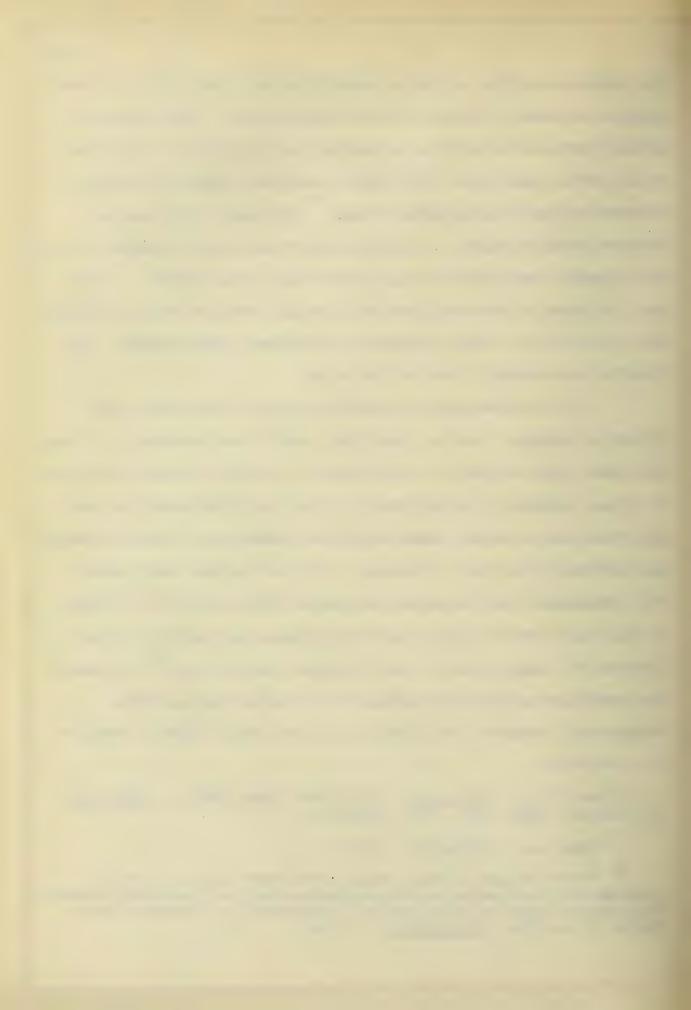
his keepers and died within a short time as a result of the outrageous treatment to which he had been exposed. The king was greatly offended with this proceeding but apparently interposed no objection when later the friar's body was dragged through the streets of London at a horse's tail. Not long afterward a brother friar ventured to preach against this cruel murder, but he was promptly imprisoned by the provincial of his order. It is easy to perceive the position of clerical immunity when a prelate would take such a stand regarding the arrest, imprisonment, and finally the murder of one of his order.

In the same year, nineteen men were taken from the prison at Newgate, carried into Kent, and there beheaded. It was said that this was done by the order of the king without the form of trial, because a certain valet of his had complained to the king that the prisoners were notorious robbers and that he himself had suffered from their violence. Five of the men were clerks "who complained and denounced as against the laws of the Church of God that they should die in this ignominious manner without process, or examination, or any judgment whatsoever." At almost the same time an English Franciscan in Calais was captured, charged with treason, and brought to the Tower, where he was put

⁶ Ran. Hig., Polychron., IX, 33-39; Thos. Wals., Hist Ang., II, 112-114; Eul. Hist., III, 349-350.

⁷ Ran. Hig., Polychron., IX, 43.

^{8 &}quot;Erant namque quinque eorum presbyteri qui alta voce gementes et querelantes contra ecclesiam Dei eo quod sine processu sine examinatione et sine judicio quodammodo ita turpiter morerentur." Ran Hig., Polychron., IX, 49.

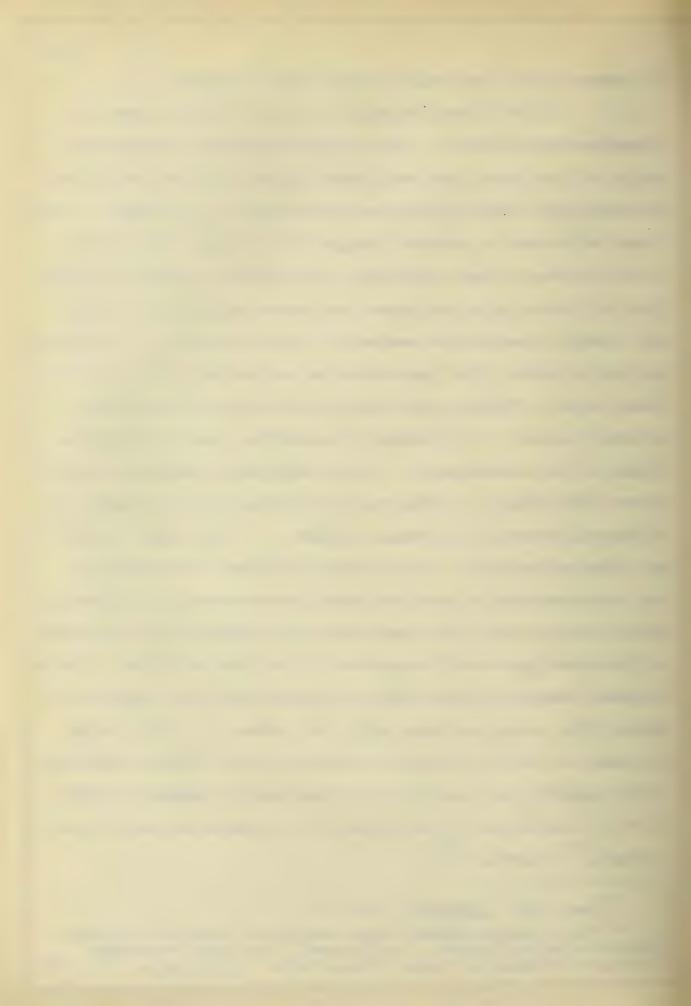


to severe torture but could not be forced to confess.

In 1183 Bishop Despenser of Norwich led his army of crusaders into Flanders. After a few preliminary successes the weight of the French army was thrown against them and one by one the towns that they had taken were recovered by the French. Gravelines, which was in personal charge of the bishop, held out for a time but was at last abandoned, and the bishop returned to England to face an angry parliament and a more angry king. A long and careful investigation was made of the conduct of and his officers. The leaders who had surrendered their posts to French arms or French money were heavily fined and the bishop, although cleared of the charge of corruption, lost his temporalities for his mismanagement. In the sentence a familiar ground is taken: "Sir Bishop, the king our lord wishes you to be judged as a temporal person of his realm, because . . . you carry yourself as a temporal person. You have been a soldier of the king and you are accustomed to have your sword borne before you and you do publicly many other things each day like a temporal lord contrary to the common custom of the estate of a prelate of England. Nevertheless, because of your estate, the king, out of his grade, abstains from laying his hands upon your person . . . but you are in mercy to the king and put to ransom for your offense according to the quantity and quality of the same and the payment of this is to be constrained by the seizure of the temporalities of your bishopric of Norwich."

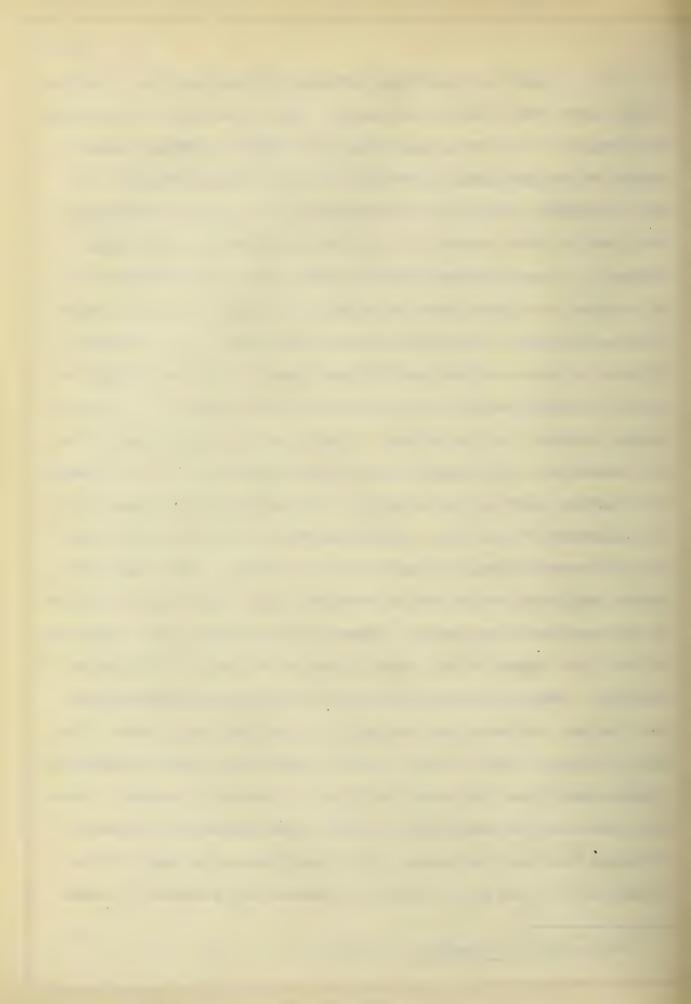
⁹ Ran. Hig., Polychron., IX, 68.

^{10 &}quot;Et plusours autres choses semblables faites vous chescun jour come Seignr Temporel, publiquement, encontre la commune custume de l'estat du Prelat d'Engleterre." Rot. Parl., III, 156.



In 1386 the relations between the king and the constitutional party were becoming strained. Led by the duke of Gloucester the enemies of the royal party had succeeded in getting measures passed by the parliament providing for the imprisonment of the earl of Suffolk and for the appointment of a council of regency which was to have control of all matters concerning the royal revenue. It was provided that no person was to move the king to act against this commission or attempt to hinder it in its activities under pain of imprisonment and forfeiture. For a second offense, it was provided that "if any person shall be attaint or convict he shall suffer the pains of life and member . . . always bearing in mind the pontificial dignity and the privilege of the Holy Church and the clergy in all things aforesaid." later actual hostilities broke out between the Lancastrians and the followers of the king, but the latter were soon put to rout and the constitutionalist party held the field. They summoned a packed parliament which met in February, 1388, and which is known as the Merciless Parliament. Appearing before this body, Gloucester and four others of his party appealed the king's friends as traitors. Before the end of the month sentence was passed upon the five men who were held responsible for the king's acts. The duke of Suffolk, Vere, Chief Justice Tressilian, and Sir Nicholas Brembre were given the usual sentence for cases of treason. ander Neville, the archbishop of York, was sentenced to lose his temporalities, and his goods movable and immovable were confiscated; but "no one even thought of pronouncing sentence of leath

¹¹ Ran. Hig., Polychron., IX, 86.



upon him because of his dignity, but they left it to the Lord Pope and to the other prelates to investigate and settle the cause of his degradation. Meanwhile the said archbishop remained in hiding labecause he did not dare appear in public." Neville who had taken refuge in his diocese decided that it would be much safer to leave the country; but he was captured in an effort to cross from 13

Newcastle to France. He was held in custody for some time but at last effected his escape to the continent.

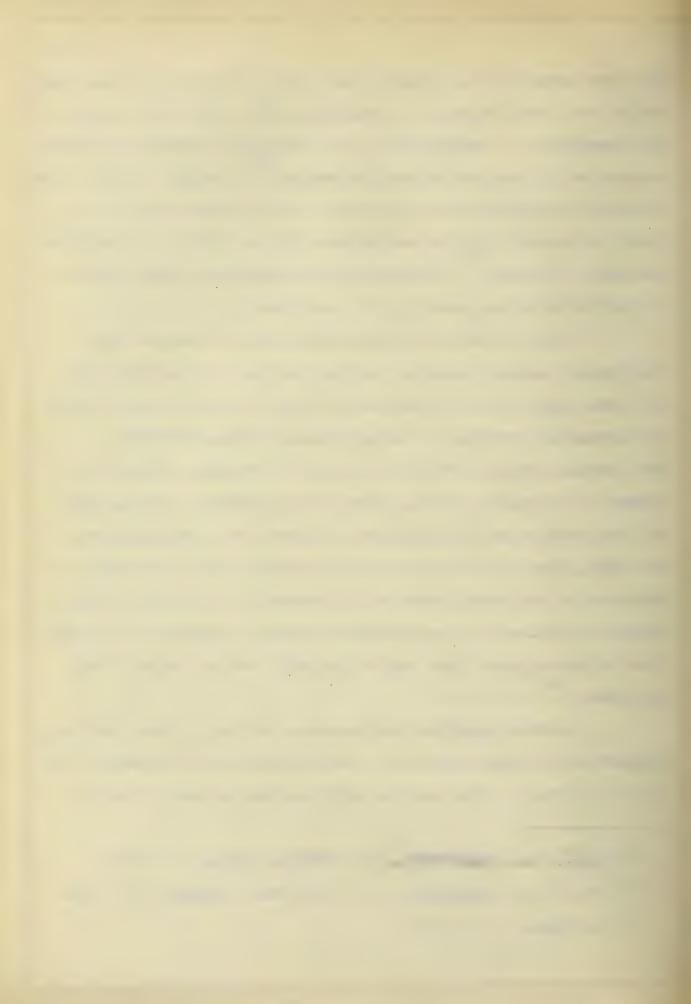
Were brought against Brembre. After reciting the provision of the Great Charter that no man is to be put to death without trial the accusation proceeds: "the aforesaid Nicholas Brembre.. took certain persons out of the prison of Newgate, priests and others to the number of twenty-two, some indicted, some appealed, and some imprisoned on suspicion of felony, and some approvers, and taking them out of London to Folkstone in Kent did there, in detriment to the royal power and in treason to the king without warrant or process of law behead all save one appealed of felony by an approver, which one they voluntarily set at large at the 14 same time."

Another important ecclesiastic who was to feel the displeasure of the lords appellant was the bishop of Chichester, the king's confessor. This man had been careless enough to say in

¹² Ran. Hig., Polychron., IX, 165; Rot. Parl., II, 237.

Ran. Hig., Polychron., IX, 183; Rymer, Foedera, VII, 589.

¹⁴ Rot Parl., III, 231.



public that the charges laid against the king's judges had been unjust and therefore, on March fifth, he was called to the bar of the house of lords and "the commons pleaded that he be arrested for what he had done and the prelates counterpleaded." would have been sentenced to be drawn and hanged save for reverence for the holy church and for his clerical order." Afterwards the council met in special session to consider what they should do with this "nefarious bishop whom the secular power could not sentence to drawing and hanging until he had been degraded and deprived of all his rights, honors, and ecclesiastical grades." Later the bishop was sentenced to lose his "lands and tenements, goods and chattels," and his body was placed "at the disposition of the king. " The final sentence was that the bishop "should carry himself to our land of Ireland, to our city of Cork and remain there till the end of his life." The prelates were not the only ones to feel the wrath of the lords appellant. Walsingham gives the names of half a dozen of the less important clergy who were imprisoned, and Higden tells that ons, John Ripon, was arrested

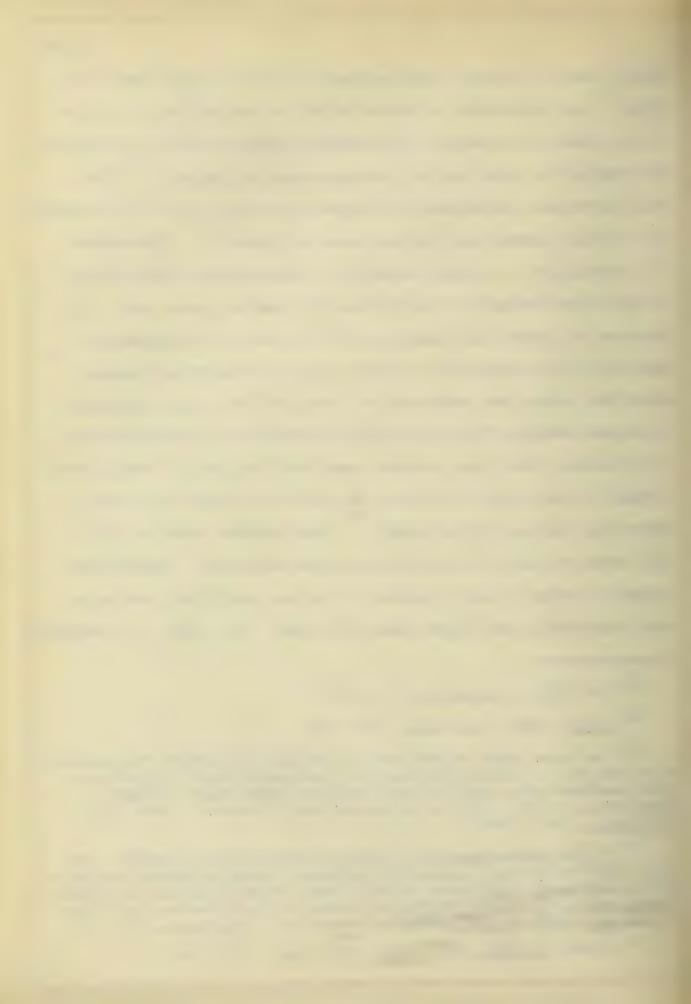
¹⁵ Ran. Hig., Polychron., IX, 169.

^{16 &}lt;u>Ibid.</u>, 151; <u>Rot.</u> Parl., III, 241.

[&]quot;Ad haec omnes existentes in parliamento contra eum graviter sunt commoti, et simile judicium sioi dedissent nisi, oo reverentiam sanctae matris ecclesiae ac ordinis clericalis suaeque dignitatis, ab hoc protunc proposito destitissent." Ran. Hig., Polychron., IX, 169-170

[&]quot;Unde postea super hoc librate consilie quid facerent cum tali nefando episcopo demum considerabant, quod potestas secularis, antequam fuerit degradatus et rite omni honore et gradu ecclesiastico fuisset privatus, nequaquam posset in ipsum sententiam tractionis et suspensionis proferre." Ran Hig., Polychron., IX, 170.

¹⁹ Rymer, Foedera, VII, 590; Rot. Parl. III, 244.



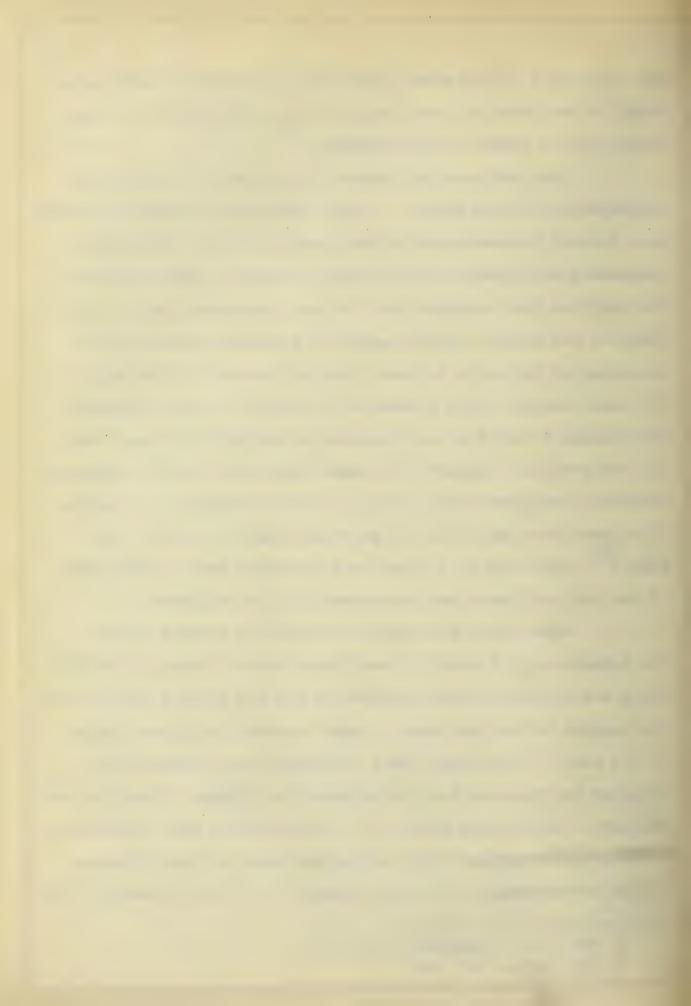
and "clad only in a blanket, his feet tied under the belly of a mare, he was taken to London where he was delivered to the custodian of the Tower for imprisonment."

The last case of interest in the reign of Richard II concerned Sir Thomas Haxey. In 1397 Haxey was condemned to death as a traitor but was saved by the pleading of the archbishop of Canterbury and numerous of the other prelates. After the king had reprived the condemned man "the said prelates thanking the king for his mercy, humbly begged and implored him out of the abundance of his mercy to grant them the custody of the body of the said Thomas, to the reverence of God and for the honesty of Holy Church." And the said prelates protested fully that "they did not petition, request, or demand this great favor of guarding his body through any right, duty, or power attaching to them in this case but solely from the especial grace and wish of the 21 king." This sort of a plea found immediate favor in the eyes of the king and Haxey was surrendered to the archbishop.

Among those whom Henry IV called to account after the deposition of Richard II was Thomas Merks, bishop of Carlisle. Merks was at first simply deprived of his see for his only offense, his support to the late king. Later however, the bishop joined in the plot of Huntington, Kent, Salisbury, and others of the nobility who retained their attachment for Richard. When the conspiracy to seize Henry failed, all the important men concerned in it with the exception of the bishop suffered for their treason either at the hands of the king himself or of his followers. The

²⁰ Ran. Hig., Polychron., IX, 184.

²¹ Rot. Parl., III, 341.



bishop was also condemned to death, but the sentence against him was suspended because of his office, and after a short confinement in the Tower he was sent into the custody of the abbot of Westminster, who was commanded to hold him until he received further orders from the king. It is probable that the bishop was left to the judgment of the pope as he was later translated to the diocese of Samosata in eastern Asia Minor. It may have been the conduct of this churchman that led Henry to write Thomas de Beauchamp who was acting as justice in the county of Middlesex: "The recent statute at Westminster contained among other things that no archbishop or bishop should be impleaded before the court of our justices for any crime without our special order and that the proper remedy in such cases was the ordinary." In spite of this averment "our council orders that if any archbishop or bishop be impleaded or indicted for any offense our justices shall proceed to deliberate according to the laws and constitution of our realm of England . . the statute notwithstanding."

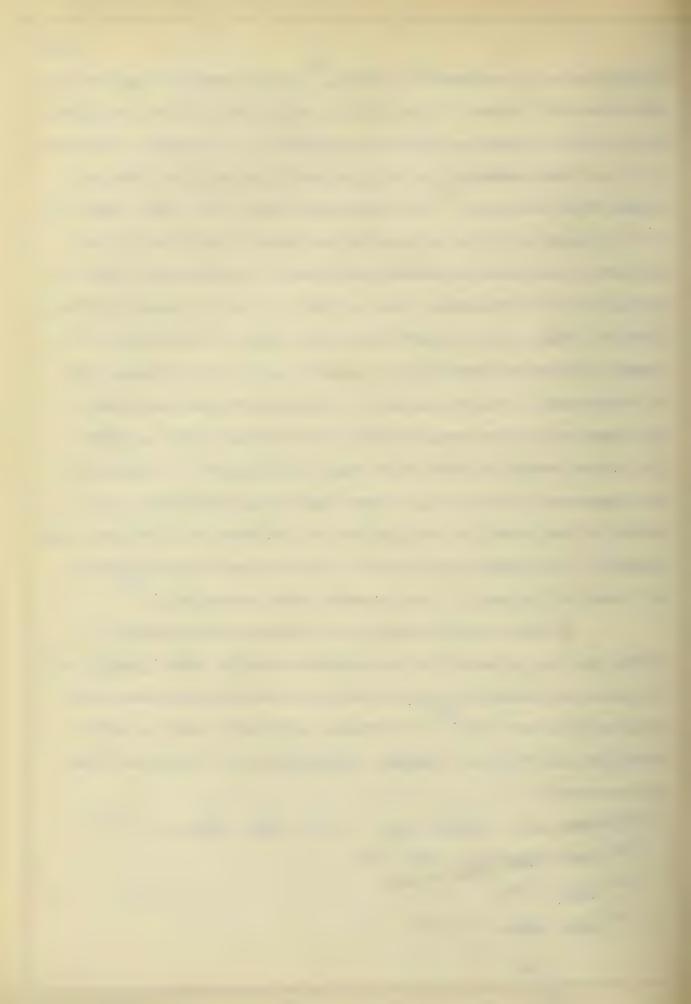
In 1402, after Henry IV had reigned three years, the people who had welcomed him so enthusiastically were "gravely discontented and Wished for King Richard because the king took their 25 goods and did not pay." The friars especially seem to have opposed him and they were largely responsible for the rumors that

²² Thos. Wals., Hist. Ang., II, 245; Eul. Hist., III, 387.

²³ Rymer, Foedera, VIII, 150.

²⁴ Ibid., 123.

^{25 &}lt;u>Ful. Hist.</u>, II, 389.



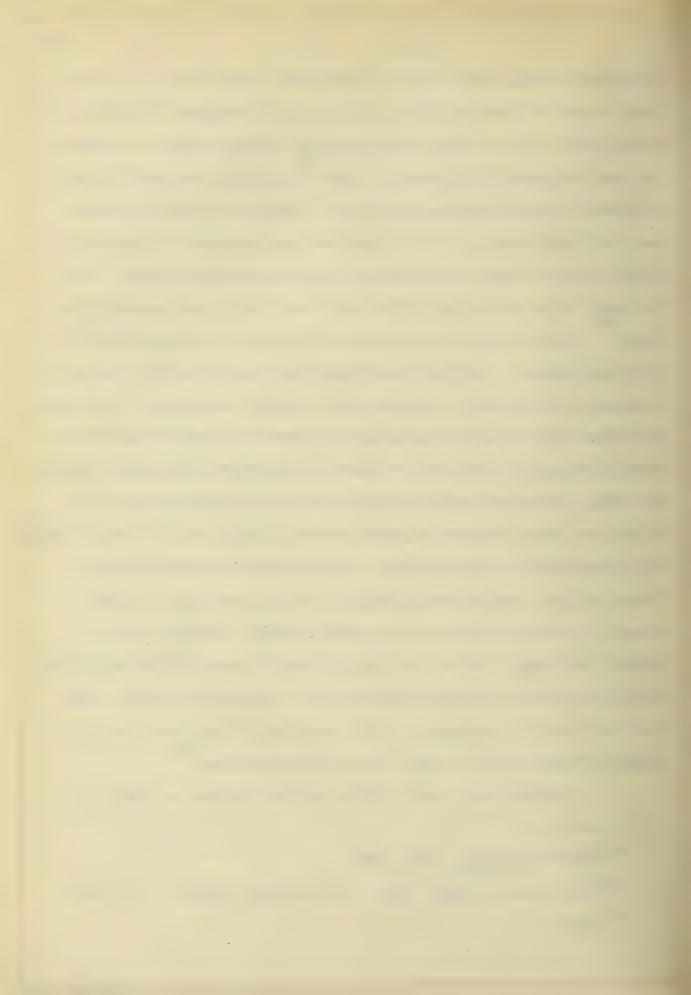
to spread through the country that Richard was alive. The king sent orders to his justices in the north to suppress rigidly all such rumors and to arrest every person, whether clerk or layman who was suspected of spreading them. England was swept clean to discover plotters against the king. Among the first to suffer was the Franciscan prior of Laund who was executed, together with eight of his friars, not because he had committed any act, but because he had concealed plots that were being made against the king. Eight of the prior's monks suffered a similar fate for the same reason. Another Franciscan was brought before the king charged with spreading the news that Richard was alive. He freely admitted that he had rejoiced at the news but denied that he had done anything to further the rumor or to arouse the people against the king. Time and again the king tried to entrap him and as often the friar returned clever answers though such as could hardly be calculated to save his life. To the king's questions the friar replied that he would support the one who had the best cause; he would fight for his chosen leader, probably with a stick; and finally when the king pointedly asked, "What would you do with me after you had defeated me," the friar replied, "Make you the duke of Lancaster." This matching of wits was not to Henry's liking and the friar went to the gallows.

In the same year a friar who had fallen out with his

²⁶ Rymer, Foedera, VIII, 255.

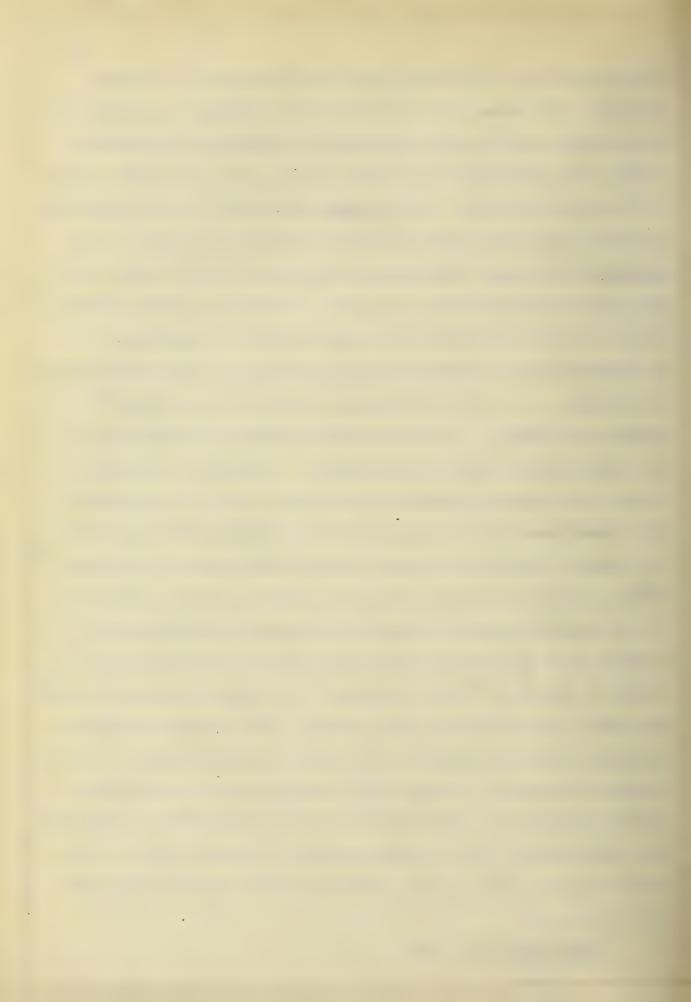
²⁷ Thos. Wals., Hist. Ang., II, 249; Eul. Hist., III, 389.

²⁸ Ibid.



convent reported to the king that five hundred men, regulars, seculars, and laymen, had met at Oxford to arrange the search for King Richard and that the old master of theology of Leicester convent had prophecied that Richard would return and defeat Henry on the field of battle. The magister and eight of his friars were arrested at once and were led before the king in council. The magister made enough treasonable statements on this occasion to hang all the Franciscans in England: "I do not say that Richard lives, but if he does he is the rightful king of England . . he abdicated under coersion while in prison and such an abdication is unlawful; . . . while the king was in prison you /Henry/ usurped the crown; . . if he is dead you are his murderer and you have lost all right to the crown; . . you never loved the church, you robbed it before you were king, and now you destroy it." Henry was overcome by the flood of denunciation and could only reply, "You lie!" and then ordered the friars to the Tower. Later, at another hearing, the chief justice made the accusation: "It is charged against you that, in hypocrisy and falsity you preached that King Richard was alive and that you excited the people to search for him in Scotland. You enjoined people for penance that they search for him in Wales. You collected money and sent it to Owen Glendower that he might come and ravage the whole country of England. You sent five hundred men into Scotland to search for Richard." The friars at once replied: "We put ourselves upon the country." But it was impossible to get a jury of Londoners to try the case, and the justices at last called in men from

^{29 &}lt;u>Ful. Hist.</u>, III, 391.



Islington and Highgate who found the friars guilty. But after they had been executed the jury came to the Franciscan houses in London "weeping . . and praying pardon and saying that unless they had 30 found them guilty they themselves would have been destroyed."

Still another friar was taken for the same charge and having shown himself to be "very constant in his sentiments . . . was drawn and hanged in his habit." One of the cases was amusing: a certain woman accused a Franciscan of treasonable speeches; but when he was brought before the justices he stoutly denied her charges; proof seemed to be lacking for the judges "decided that he 31 ought to fight the woman with one hand tied behind his back."

The woman withdrew the accusation and the king's suit was dropped 32 through the intercession of the archbishop of Canterbury.

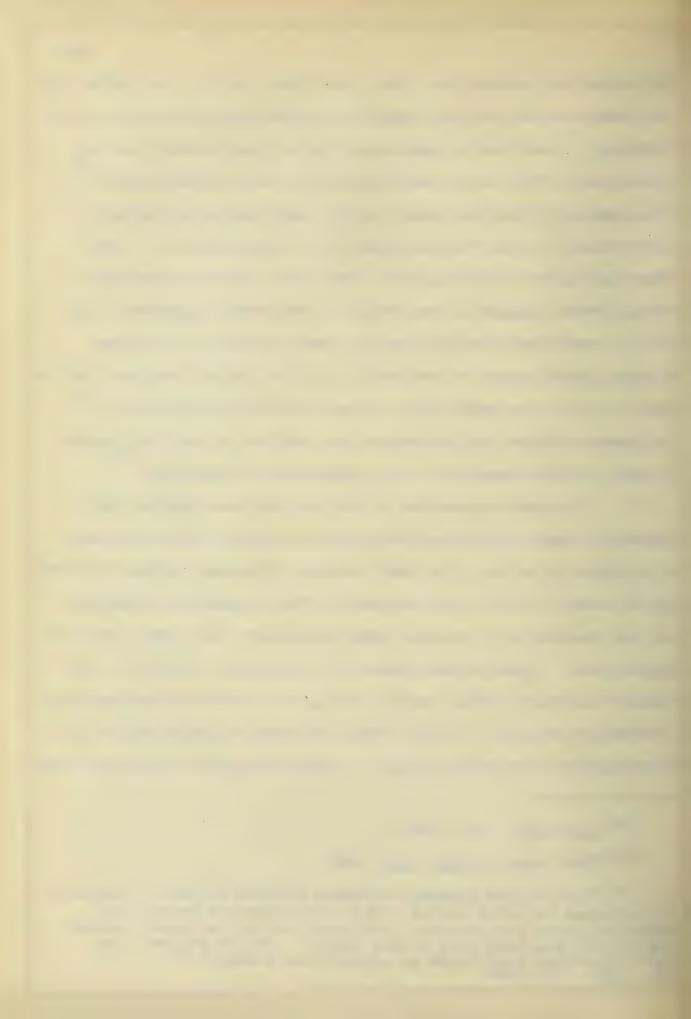
The severe measures of the king at last quieted the dangerous rumor that Richard was alive but Henry's troubles were by no means at an end, for Owen Glendower, who had raised the standard of revolt in 1401, had aroused all Wales against the English and had successfully resisted every expedition that Henry had sent against him. Moreover each attempt of the king to take the field against the Welsh rebels was the signal for a more or less serious outbreak in England. In 1405 Henry prepared to put an end to his Welsh difficulties once for all but before his army was in the field

^{30 &}lt;u>Ful</u>. <u>Hist</u>., III, 393.

³¹ Thos. Wals., <u>Hist</u>. <u>Ang</u>., 249.

^{32 &}quot;Item mulier quaedam accusabat Fratrem Minorem de conventu Cantibrugiae senem de certis verbis dictis contra Regem; qui statuitur coram justitiario. Qui dedit sententiam quod pugnaret cum muliere una manu post dorsum ligata. Sed ad suggestionem amicorum mulier pacificata ab accusatione cessavit."

Eul. Hist., III, 389.



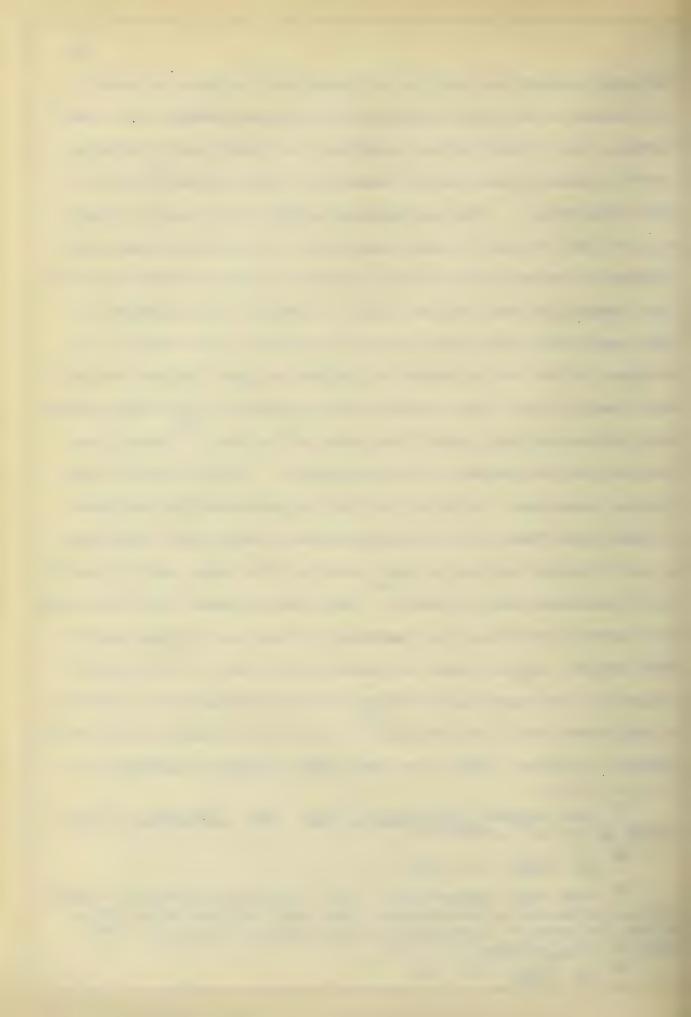
the news reached him that the northern counties were in revolt. The leaders in this uprising were young Thomas Mowbray, then earl marshal, and Richard Scrope, archbishop of York; and by alleging constitutional grounds as the reason for their revolt they won a great following. The unscrupulous action of the earl of Westmorland, who seized the earl marshal and the archbishop when they visited him under safe conduct, checked the revolt before any serious damage had been done and left to the king, who appeared in York soon after, only the problem of punishing the rebels. The citizens of York who appeared in penitential garb before the king were heavily fined, and eighteen Friars Minor who had been arrested were striped entirely naked "and sent out to run;" there then remained the two leaders to be dealt with. The king called upon William Gascoigne, the chief justice, to pronounce the sentence of death upon them; but the judge refused, saying that there was no law by which the king or any person of his realm could pronounce such a sentence upon a bishop. Archbishop Arundel who, forseeing the course of the king, had hastened to York, also interposed to save Scrope, advising that the archbishop be sent to the pope for judgment or at least that judgment be suspended until the opinion of parliament could be obtained. The king dissembled and invited Arundel to dinner. While they were eating William Fulthorpe, "a

John Capgrave, Chronicle of Eng., 288; Historians of the Church of York, II, 292-304.

^{34 &}lt;u>Eul</u>. <u>Hist</u>., III, 407.

^{35 &}quot;'Nec vos, domine mi rex, nec aliquis nomine vestro vester ligeus, potestis licite secundum jura regni aliquem episcopum ad mortem judicare.'" <u>Historians of the Church of York</u>, II, 306; Wharton, <u>Anglia Sacra</u>, II, 370.

^{36 &}lt;u>Eul. Hist.</u>, III, 407.

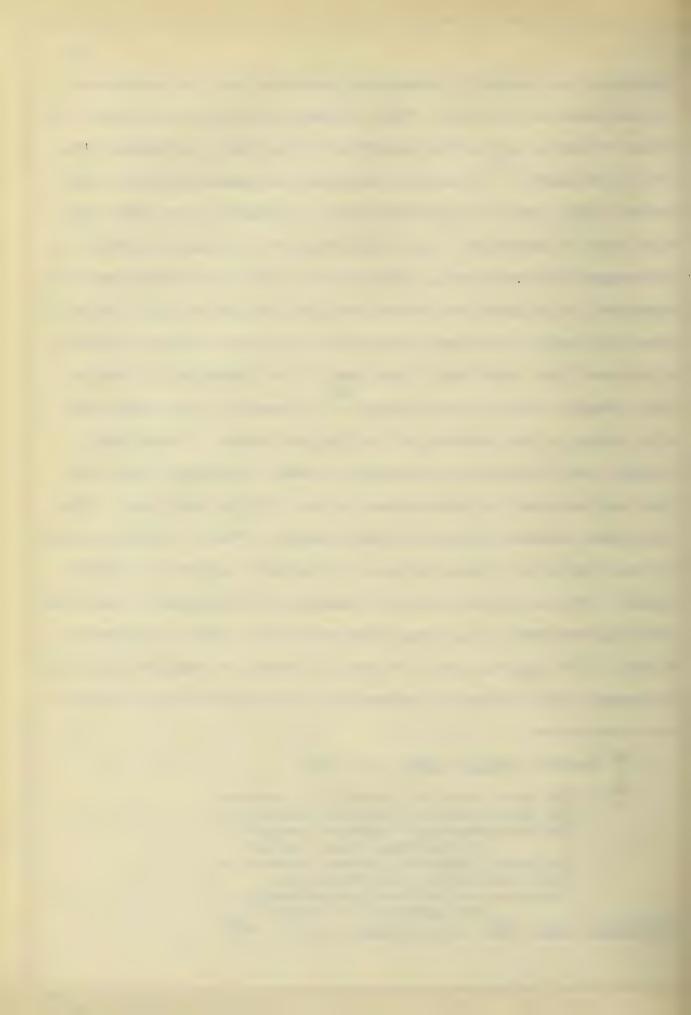


knight and no justice", pronounced sentence upon the archbishop at the order of the king: "You, Richard, traitor to the king, we judge to death, and at the direction of the king, we command that you be beheaded. " A similar sentence was passed upon the earl marshal and, fearing the interference of Arundel, they were hurried away to execution. The archbishop met his death bravely; he encouraged the young earl, promising him that they should awake in Paradise; he forgave the executioner and prophesied that "he would wound his neck five times" representing the five wounds of Christ, a prophesy that came true. The news of the beheading of Scrope 38 was a fearful shock to the clergy. It was the first execution of a bishop in the history of the English church. Archbishop Arundel, who fainted at the terrible news, immediately left the king and returned to London where he was ill for many days. When the report reached the pope he wept saying: "Woe! Woe that in my day such an injury should be done to Christ's spouse by impious hands." But he did not stop with weeping but prepared to excommunicate all who were in any way involved in the death of the archbishop. The king was quick to come to terms; he realized his sin; the moment that Scrope had succumbed to the fifth blow of the ex-

³⁷ Wharton, Anglia Sacra, II, 370.

[&]quot;Nil ergo conscius praesul non resonat,
Nec latas canonis censuras fulminat,
Sed prothomartyris exemplo geminat,
Ne Christus noxam statuas.
Non sacri temporis prodest praesentia,
Nihil nobilitas, nil reverentia
Personae, ordinis nec praeminentia,
Hae habent voces vacuas."

Political Songs, Edw. III to Rich. III, II, 115.



began at the tomb of the archbishop. It was fitting therefore that Henry's messengers should appear "with bare feet, torn garments, and bowed heads" to ask forgiveness of the pope, and to promise in return that the king would found three new monastaries 40 "free from all imposition, and leave the clergy in peace."

The echo of the revolt of 1405 was heard three years later when the earl of Northumberland and Lord Bardulph, who had been in hiding since the failure of Scrope's rising, once more determined to take arms against the king. They were joined by a number of the clergy and when, at Bramham Moor, the little force of rebels was scattered by the king's army, Lewis, bishop of Bangor, the abbot of Hales, and the prior of Hexham fell into the hands of the royal forces. The prior and all his convent were pardoned for all their "treasons, insurrections, rebellions, felonies, transgressions, misprisons, adhesions, concealments, offenses, conspiracies, confederations and flights;" the bishop also enjoyed the royal mercy "since he was taken unarmed;" but the abbot of Hales who was wearing armor when captured was hanged as a traitor.

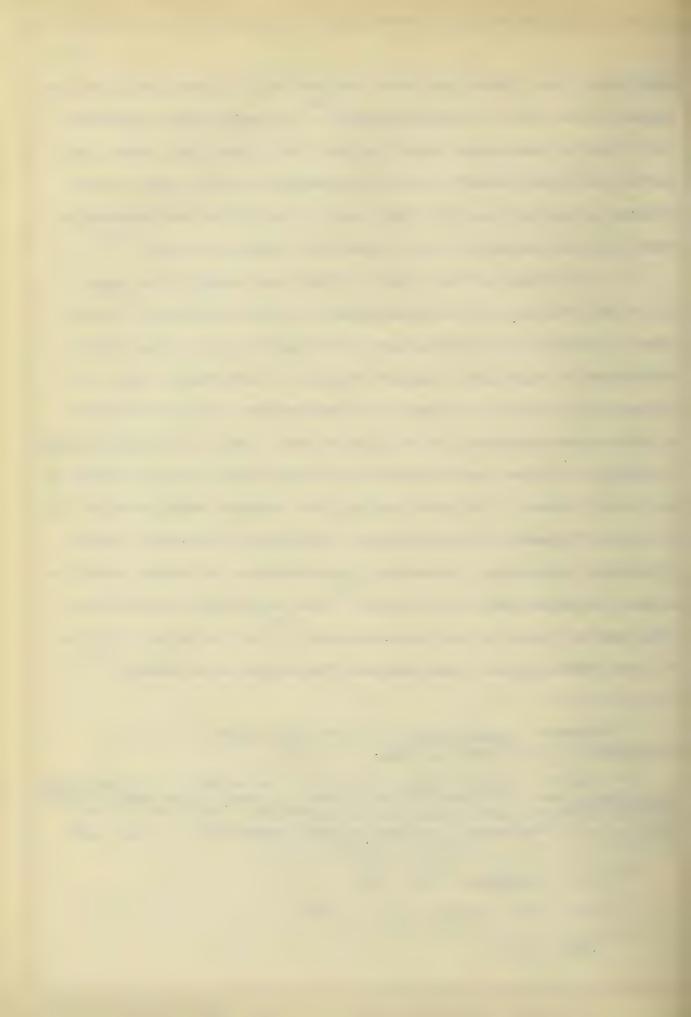
Wharton, Anglia Sacra, II, 370; Eul. Hist., II, 407; Historians of the Church of York, II, 308.

⁴⁰ Wharton, Anglia Sacra, II, 371. The author of the Eulogium Historiarum has a different story: when the pope threatened, Henry sent him Scrope's armor with the old question, "Is this thy son's garb or not? Whereupon the pope quieted materially." Eul. Hist., III, 408. See also, English Chronicle, 33.

⁴¹ Rymer, Foedera, VIII, 545.

⁴² Thos. Wals., Hist. Ang., II, 278.

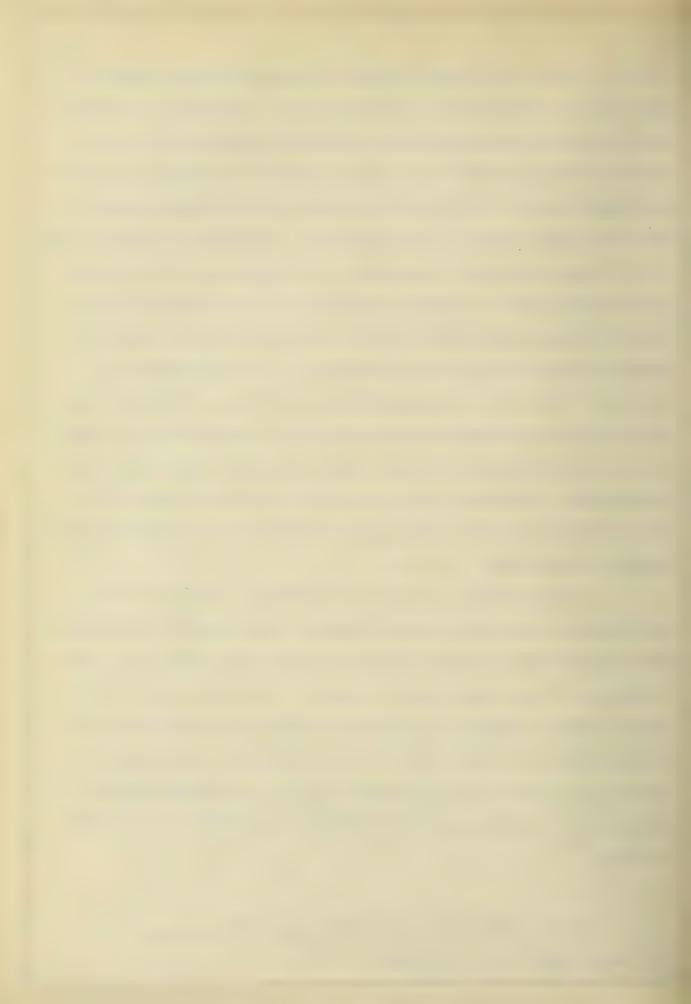
^{43 &}lt;u>Ibid</u>., 279.



After the reign of Henry IV the chroniclers cease to speak of the punishments of ecclesiastics. The system of dealing with the minor clergy had become fixed by the practice of the courts and the punishment of high churchmen for treason had become too common to call for more than passing notice save in cases in which the death sentence was pronounced. Moreover the writers had other things to occupy their minds. The opposition of the people to the clergy and to clerical privilege had led many of them to follow the leadership of John Wyclif and had thereby forced the church to devote much of its attention to the suppression of Lollardy. Then too, the Lancastrian period was a stirring time; and the war with France and the wars of the Roses drew the interest of historians away from the less obvious movements that were in progress. Therefore it is not until the time of Henry VIII that the penalties inflicted upon criminal priests are forcefully called to attention.

Popular feeling against the judicial rights of the church was not new; the time of Edward I had witnessed complaints from the commons directed against the church and during the reign of Edward III they had become frequent. A poem written in the latter years of Edward I is directed against the injustice of a system whereby a layman who is brought before an ecclesiastical court has no recourse but to submit, while a churchman accused before the lay courts may avoid justice by pleading his clerical 44 privilege.

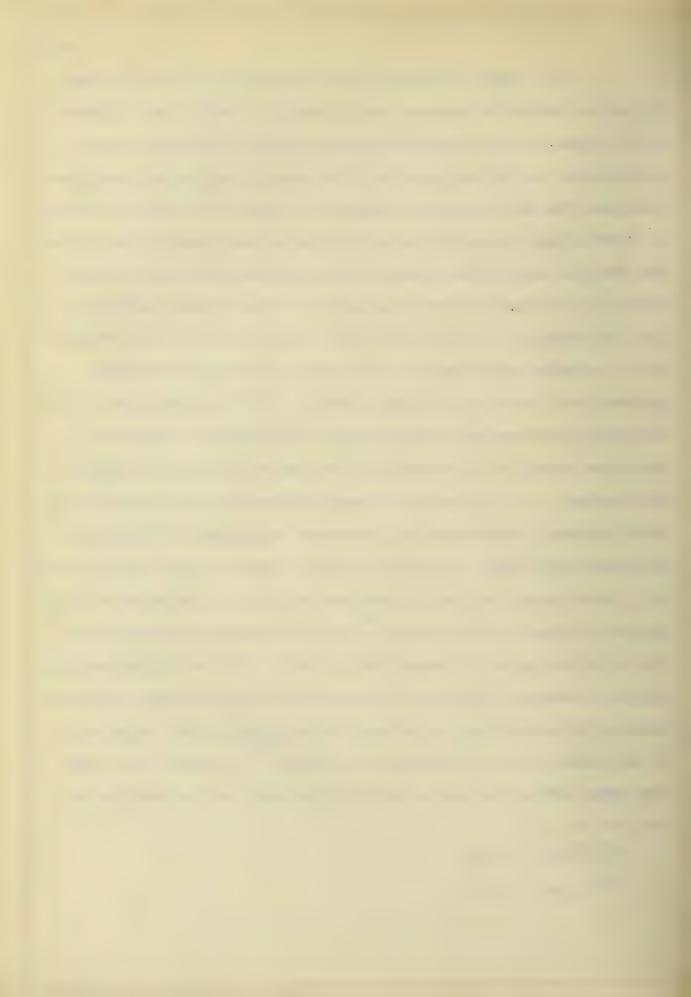
[&]quot;Come to countene court couren in a cope,
Ant suggen he hath privilegie proud of the pope."
Political Songs, John to Edward II, 157.



The reign of Richard II was ushered in by the protests of the ecclesiastics against the oppressions which they suffered at the hands of the secular officers who were enforcing their jurisdiction as far as possible. The clergy complained that prelates and "as well beneficed Persons of the Holy Church, as other, be arrested and drawn out as well of Cathedral Churches, as other Churches and their Churchyards, and sometimes while they are intending to Divine Services, and also in other Places, although they be bearing the Body of our Lord Jesus Christ to Sick Persons, and so arrested and drawn out, be bound and brought to Prison against the Liberty of the Holy Church." In the first case it was conceded that those who brought about the unlawful arrest of churchmen should be in mercy as in the case of those who made a false appeal. In the second it was ordained that any officer who should arrest a churchman in the manner complained of should be imprisoned and fined; "Provided always, That the said People of the Holy Church shall not hold themselves within the Churches or Sanctuaries by Fraud or Collusion." The statutes also show that the laity had begun to resist the authority of the ecclesiastical courts in several fields and that spiritual judges were being persecuted for attempting to enforce their jurisdiction, especially in the matter of the collection of tithes. A short time later they were asking for a more rigid enforcement of the statute of

^{45 1} Rich. II, 15.

^{46 1} Rich. II, 12.



prasmunire, petitioning that whoever should bring sentences of excommunication into the country against any person who had been instrumental in the enforcement of the statute of provisors should suffer as a traitor provided that "he was of less estate than a 47 prelate." The king made certain concessions but was unwilling to go to such lengths. The commons also turned their attention to benefit of clergy and petitioned that bishops be more careful in the purgation of murderers and robbers who had been delivered to their prisons, since the easy liberation of clerical felons "had been to this time to the great damage of the people." In response the king charged the prelates to abstain from permitting easy purgations, especially those of "notorious felons," and added the threat that he would, with the advice of his council, 48 find a fitting remedy if his injunction was disobeyed.

The Lollards made episcopal jurisdiction one of the points of their attack and among the conclusions which were denounced as heretical are several that bear with more or less directness upon the clerical privilege. Archbishop Courtenay in 1383 impeached the statement that "the people are able by their word to correct 49 delinquent churchmen," while a more pointed claim that even "the Roman pontiff is liable to secular correction" was condemned and refuted by the churchmen who took up the task of answering the 50 Wyclifite arguments. The exchange of poetic broadsides between

⁴⁷ Rot. Parl., II, 270.

⁴⁸ Rot. Parl., III, 23.

⁴⁹ Wilkins, Concilia, III, 157.

⁵⁰ Fasc. Ziz., 256.

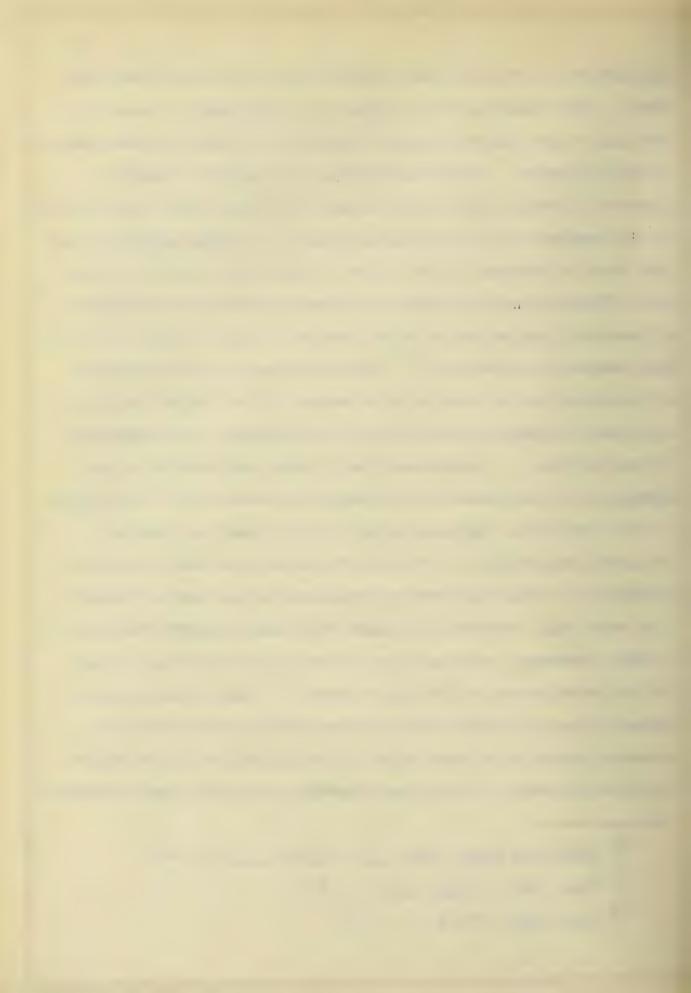


the parties is even more enlightening than the theological arguments. Jack Upland asks the friars why they fear to submit to the king's laws unless they are traitors and dread the consequences of their treason. Tobias Daw in reply, apparently seeking to placate the people, says that bishops and others have their prisons by the permission of the kings and that it is lese-majeste to hold that this is contrary to God's law. Jack rejoins that the cases are different, that the king has an established law administered by impartial judges who do equal justice to all" as they did when they hanged your traitors." If Walsingham is to be believed the Lollards did not stop with polemics; in 1410 after failing in an attempt to deprive the church of its property, "the excreable Lollard knights ... petitioned that clerks convicted of crime should not be delivered to the bishop's prisons but to the prisons of the king or the temporal lords; but this was not granted. The penal jurisdiction of the church was not the sole object of attack for in 1414 the commons complained in parliament because they were being summoned to courts Christian to answer "in cases of debt, trespass, contract, and other matters which lie wholly in the jurisdiction of the king's court." Such evidence as this makes it clear that the church courts both in their civil and criminal jurisdiction were rapidly losing favor with the people while at the same time they were becoming more and more distasteful

⁵¹ Political Songs, Edw. III to Rich. III, II, 85.

⁵² Thos. Wals., Hist. Ang., II, 283.

⁵³ Rot. Parl., IV, 20.



to the temporal authorities.

Richard II was more liberal in his dealings with the church than his father: "No bishop could have been more zealous than he .. to fortify the church against the secular power and lay 54 avidity." His successor however was not so pliable. It is true that Henry IV favored the church for it was necessary that he have the support of the great churchmen. Yet, in the matter of criminal justice he followed the plan of Edward III and kept a steady restraint upon the activities of the church courts. It has been noted that he was more severe upon clerical traitors than any of his predecessors, but in other ways he held to the limits established by his grandfather.

During the latter part of the reign of Edward III the judges had taken a new step against the privilege of clergy by denying the right of ecclesiastical trial to all clerks who were found guilty upon indictments which contained the words depopulatione agrorum or insidiatione viarum. Archbishop Arundel brought 55 this to the king's notice in 1399 but apparently without gaining any relief for he made a fresh complaint three years later. In the petition the convocation of Canterbury pointed cut that Edward III had promised that all clerks convicted of crimes not directed against the person or the majesty of the king should be delivered to their ordinaries. They complained however that clerks, both secular and religious, when indicted as common thieves, depopulators of fields, or highway robbers were accorded the same treatment

⁵⁴ Ran. Hig., <u>Polychron</u>., IX, 174-175.

⁵⁵ Wilkins, Concilia, III, 244.



as laymen when found guilty of these offences; and for this reason petitioned that the statute of Edward III be strictly observed. The king replied that such practices were innovations and that he would therefore make the desired concessions. firmed the statute Pro Clero; ordered that the words insidiatores viarum and depopulatores agrorum should be left out of indictments, although words of a like nature could be included; and commanded that, should the prohibited phrases appear, the clerk convict should be immediately delivered to the ordinary notwithstanding. Another chapter of the same statute reaffirms Pro Clero and promises the delivery of any clerks convicted of treason, "that toucheth not the King himself, nor his Royal Majesty," or as a common thief and "as such holden and reputed," provided that the ordinary keep him securely according to a constitution to be made by the archbishop and his co-bishops, and approved by the king. It appears also that the justices had created another technicality or better, a legal fiction, for in 1411 the clergy petitioned that clerks accused of fornication and adultery should not be indicted for rape before the lay justices until the ordinary had been consulted. There is no published response to this petition nor is there any trace of the constitutions which Archbishop Arundel promised to draft in accordance with the statute above. The church made some

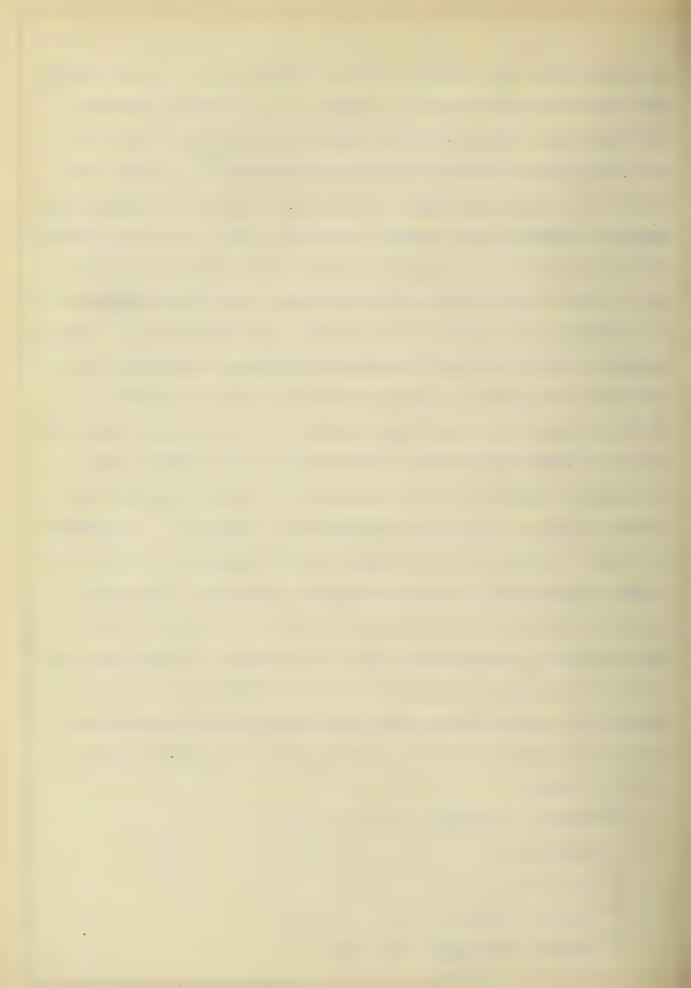
⁵⁶ Wilkins, Concilia, III, 271.

^{57 &}lt;u>Ibid.</u>, 272.

^{58 4} Hen. IV, 2.

⁴ Hen. IV, 3.

⁶⁰ Wilkins, Concilia, III, 355.



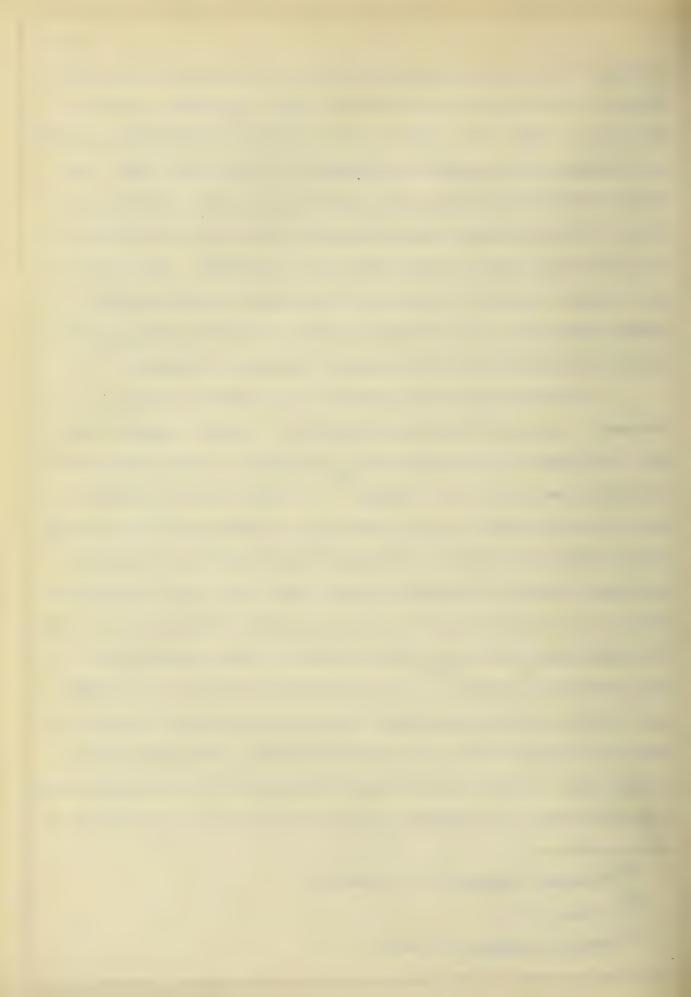
attempts to intimidate secular officers but the latter were sustained by the king, and the churchmen had to give way. Early in the reign of Henry IV a clerk of the diocese of Winchester resisted the officers who attempted his arrest for robbery and rape. The bailiff summoned assistance and took the clerk into custody by force. Bishop Wykeham excommunicated all who had participated in the arrest for laying violent hands on a churchman. The king at once ordered Wykeham to revoke his sentences, and threatened severe penalties if the bishop continued to oppress officers who acted in accordance with the laws and customs of England.

The reign of Henry V and his son present little of interest. One point however was settled: offenses against the coin, the status of which had been in dispute for many years were definitely declared to be treason. In 1420 Henry V asserted that it was the sole right of the king to pardon criminals "in any prison whether spiritual or temporal," and because he had heard that many clerical offenders had been held for a long time in the prison of the archbishop of Rouen, he granted each and all of them the royal mercy and ordered his bailiffs to take measures for their immediate release. John Carpenter murdered his sixteen year old wife under particularly revolting conditions; he was outlawed for the crime but was at last arrested. The commons petitioned "that it please Your Majesty to consider this horrible murder aforesaid and by the authority of your high court of parliament to

⁶¹ Wykeham, Register, II, 617-618.

⁶² 4 Hen. V, 6.

⁶³ Rymer, Foedera, IX, 882.

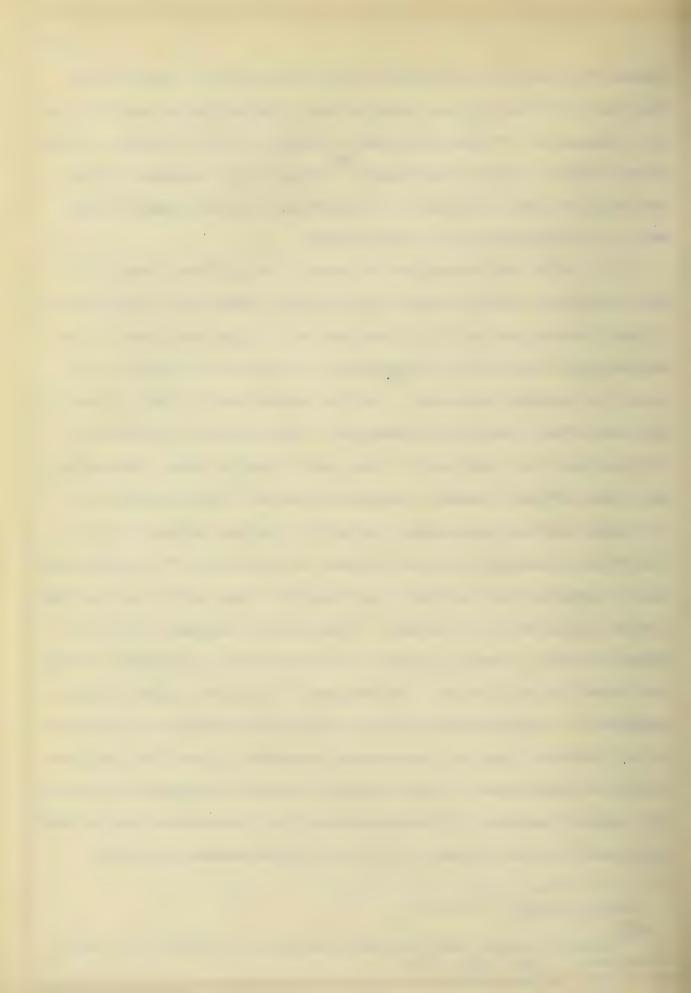


ordain that said John Carpenter may be judged as a traitor and that you give your judges power to have him hanged as such." The king responded: "Since this seems contrary to the liberty of Holy 64 Church the king will be advised." Though this measure failed, the petition set a precedent for somewhat similar measures that were to be adopted in the near future.

After the overthrow of Henry VI conditions were by no means settled in England and the new king, Edward IV, was anxious to gain the support of the church as one of the best means of establishing his position. Therefore, in the second year of his reign, he granted a charter to the church which, had it been of any real effect, would have restored the courts of the church to the position that they held in the early middle ages. Addressing all royal officers Edward recognized that the late troubles of the realm had been occasioned in part by secular abuse of the "liberties, prerogatives, and customs of the church," and explained that he granted the charter to appease the wrath of God and prevent further injuries to the nation. Therefore he declared that no judge, sheriff, coroner, bailiff, or other secular officer should have power to inquire into the excesses, felonies, rapes of women, treasons, or transgressions of any religious person or of any man in holy orders; that any indictment presented before the justices should be transferred to the ordinary who had jurisdiction without "any arrest, capture, or incarceration," of the accused and without any seizure of his property, so that the ecclesiastical court

⁶⁴ Rot. Parl., IV, 447.

Makower claims this as the high point of benefit of clergy in England. Cons. Hist., 403.

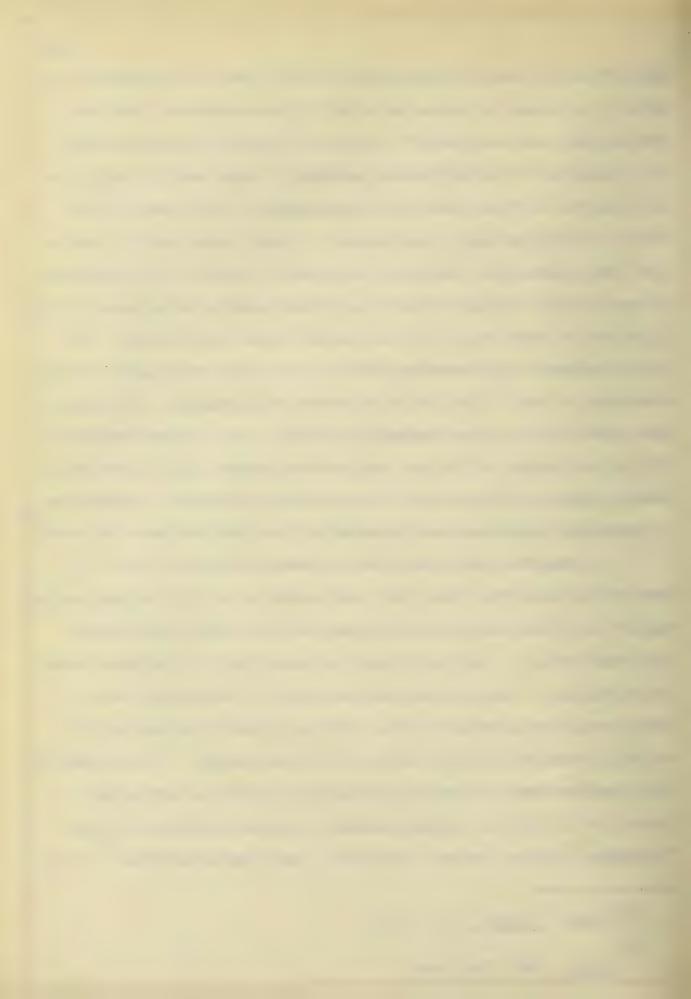


might "proceed judicially according to the laws of the church and decide the cause or causes with all its consequences, results, emergencies and incidents." Moreover, he made it possible for the ordinaries to arrest clerks accused of crime and to bring the whole matter to final termination according to the laws of the church without secular interference. If any person said he was a clerk when arraigned before the lay courts, he was to be delivered at once to the ordinary without any investigation being made of his claim and without demand for his custody from the ordinary. To these chapters which concerned benefit of clergy were added others promising to deal lightly with offenses in praemunire, to abstain from interference in ecclesiastical trials, or in church measures for the collection of tithes, and several others. All these things Edward agreed for himself and for his heirs conjuring the prelates to pronounce ecclesiastical censures if his promises were violated.

Important as these wide concessions appear to be, it must not be forgotten that they were merely a bid for ecclesiastical support and that there is no evidence to show that they were of any great effect. The year books indicate that the justices acted as before and it is doubtful whether they, or the people as a whole, would be governed at this time by a mere proclamation of the king, made without the authority of parliament. It is questionable whether Edward himself believed his charter of any great force, for in 1471 he issues pardons to three bishops for their for treasons, murders, rapes, felonies ... and transgressions." Still

⁶⁶ Rymer, Foedera, XI, 493 ff.

⁶⁷ <u>Tbid.</u>, 728, 729, 734.



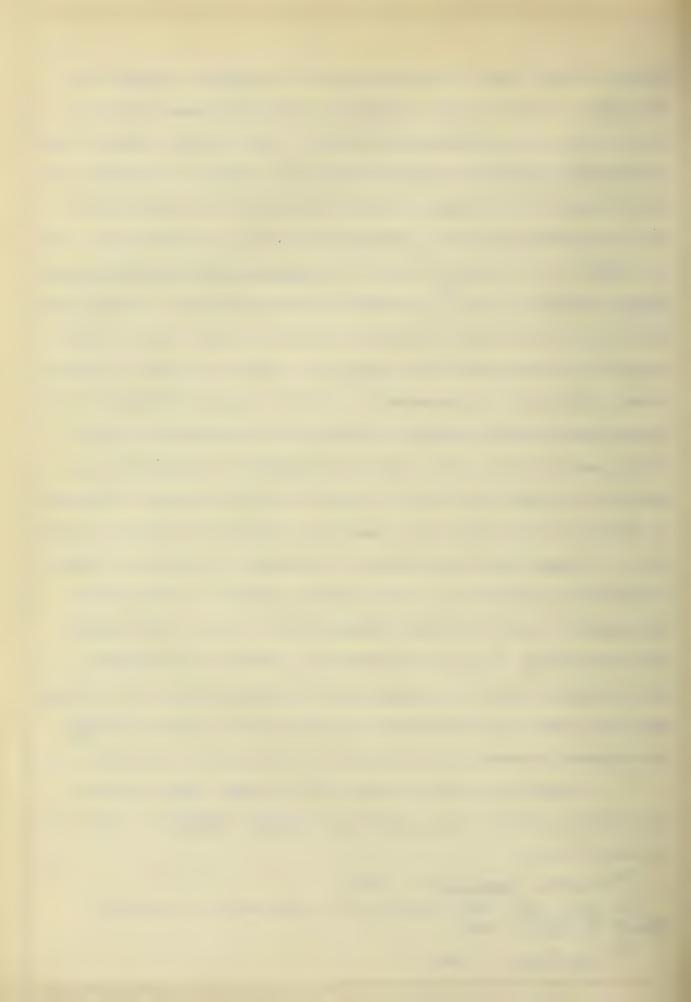
better evidence that the charter was not regarded seriously by the secular officials nor enforced by the king himself appears from a petition by Convocation in 1475. The bishops complain that priests and curates are accused before the courts of sheriffs and other judges of the king, and they petition for redress since it has been granted that such persons should not be arrested nor incarcerated by the secular power. "Ad istam petitionem dominus rex nondum consentit, etc." A somewhat similar complaint appears nine years later; and again in 1483 the clergy protests that, notwithstanding the commands of the late king, clerks are daily "troubled, vexed, indighted, and arrested." In the reign of Edward IV the commons made another attempt to restrict the offenses to which clergy was allowed. This time they followed the direction that had been indicated from time to time by the justices and attempted to take the privilege of the clergy from all those guilty of sacrilege. It seems that they were not yet ready to follow the simple procedure of announcing a crime without benefit of clergy that was adopted later; but still feeling that by right all felonies were clergyable, they first advanced all stealing in churches and similar offenses to treason and then declared that the offense was such treason as to exclude the guilty party from his clergy; this measure however did not receive the assent of the king.

During the reign of Henry VII a great change began in the attitude of the state toward the clerical immunity. From the

⁶⁸ Wilkins, Concilia, III, 609.

^{69 &}lt;u>Ibid.</u>, 612, 614. Richard III confirmed the charter of Edward IV, <u>ibid.</u>, 616.

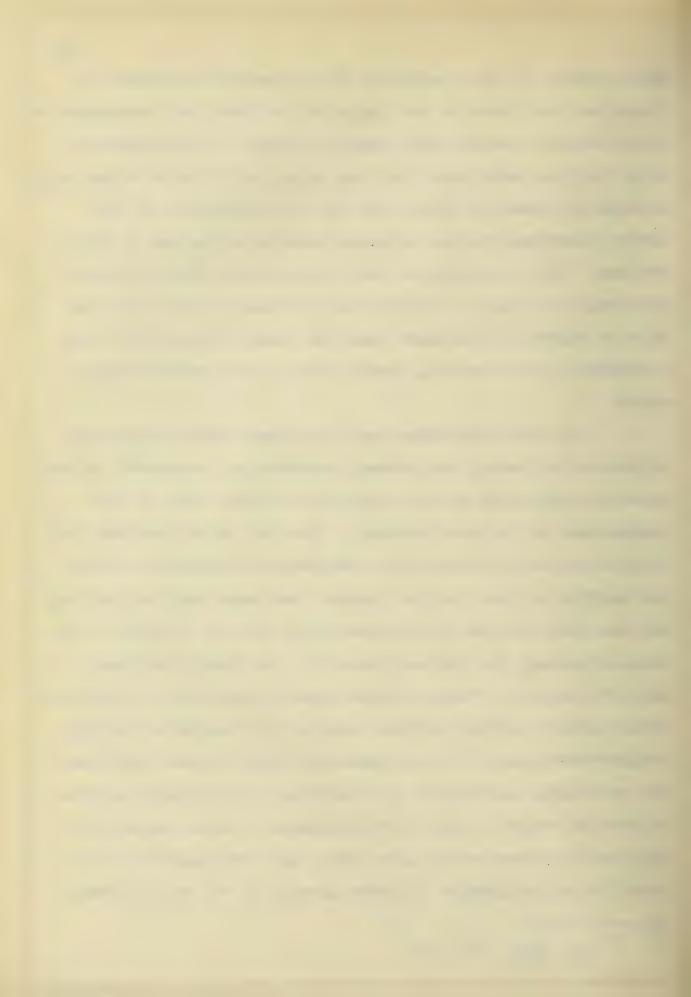
⁷⁰ Rot. Parl., V, 632.



time of Henry III the leadership in the assault upon benefit of clergy had been taken by the judges who had used the interpretation of the existing law as their weapon of attack. The precedents which they had established had been supported by the stronger kings, although at times the rulers had, on the supplication of the clergy, disavowed the more advanced measures attempted by their officers. With the coming of Henry VII the king and his parliaments take the lead in limiting the privilege of the clergy and definite statutory enactments take the place of common law rules in restricting the criminal jurisdiction of the ecclesiastical courts.

In 1487 John Spinell and six others were attainted in parliament for having "confedered, ymagyned and compassed" various commotions and riots and for having plotted the death of the greater part of the king's council. The bill which provided that "they or any one of them be not admitted nor resceyved to have 71 the benyfite of their or his clergye," was sanctioned by the king. The next year the most direct blow since the time of Henry II was launched against the clerical immunity. The fourth parliament of Henry VII enacted: "Where as upon trust of privilege of the Church divers persons lettred hath ben more bold to comitte murdre rape robbery thefte and all othre myschevous dedys, bicause they have ben continuelly admitted to the beneffice of the Clergie as ofte as they dyd offend in any of the premisses .. every persone not being within orders whiche onys [once] hath ben admytted to the beneffice of his Clergie, eftsonys arayned of eny suche offence,

⁷¹ Rot. Parl., VI, 402.



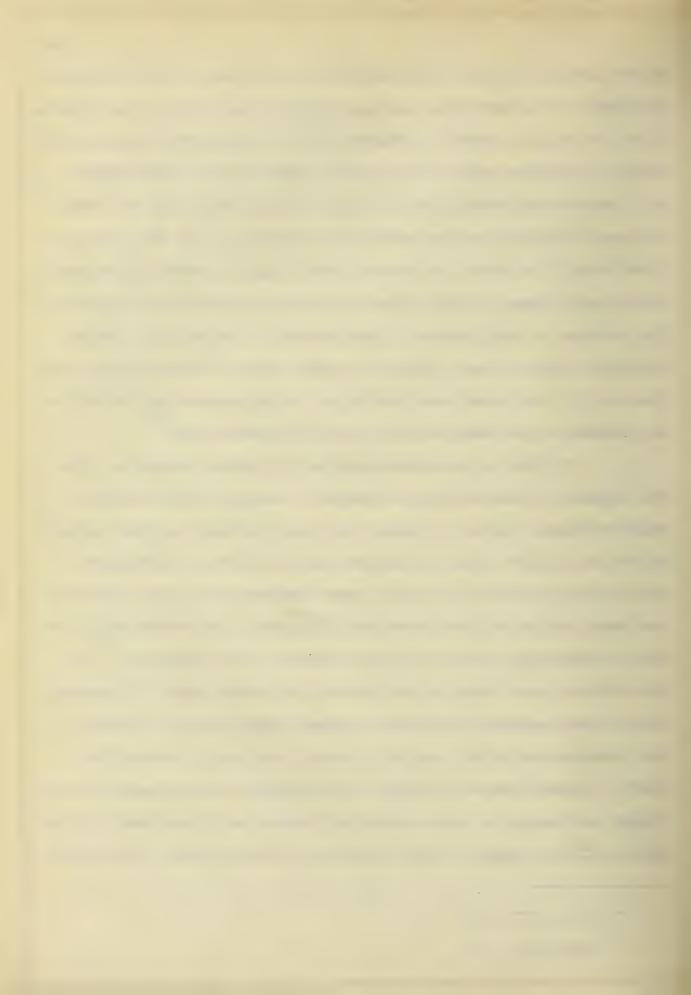
be not admitted to have the benefice or privilege of his Clergie."

In order that persons who had once enjoyed the right of the church might be readily known the statute further commanded that murderers should be "marked with a M. upon the brawne of the left thumbe" and that thieves should be similarly branded with a T; the branding was to be done by the gaoler in open court. It was also provided that if a person so branded should upon a second arraignment claim that he was in holy orders he should be required to produce his letters or certificate of ordination; if he had not brought them into court he was allowed a certain time in which to produce them and if this proof was lacking on the appointed day he was to 72 be treated in the same way as a clerk of lesser rank.

In 1491 in a statute enacted to prevent desertion from the English forces serving in France it was provided that any soldier "Uppon the See or uppon the londe beyonde the See" should suffer as a felon; "An for asmoche as his offence stretchith to the hurt and jopdie of the King ours Soverayn Lord, the nobles of the Realm and of all the comen wele thereof, that therefore he or 73 they so offendyng enjoye not the benefice of his Clergie." A more widely known statute was passed five years later. A certain James Grame murdered his master Richard Tracy hoping to escape the consequences of his act by pleading his clergy before the court. He was however attained in parliament and sentenced to be "drawn and hanged an suche maner and fourme as by the Law of this Lande hath been used in suche cases as persones being noo clerkis

^{72 4} Hen. VII, 13.

^{73 7} Hen. VII, 1.



doyng like murdre have or owt to be punysshed; any privilege of his clergie nor his demaunde of the same notwithstanding." The preamble of the attainder had explained that the hope of clergy had been the cause of many wilful and horrid murders especially of immediate superiors and its conclusion now proceeded to deny clergy to all who "hereafter purpensidly murder their Lord Maister or 74 Sovereign immediate."

The three statutes above mark the beginning of the change in benefit of clergy; previous degradation as a condition precedent to secular punishment was abolished by the law of 1488; the others mark the first step toward making the offense rather than the offender the test upon which the allowance or the refusal of the privilege should be determined.

During the Lancastrian period the justices continued to make law, and there is no evidence that the charter of Edward IV even checked their progress. Their principal work during this time was to establish the respective positions of the secular justice and the ecclesiastical officer who sat in his court to claim clerks accused of crime. In 1470 a man arraigned for murder claimed his clergy and when offered the book was able to read "only a word in one place and another in another place and he could not read three words together." The justices asked the ordinary what he wished to do and he replied that he claimed the man for the church. "And because it did not appear to the justices that he was learned enough that they might record quod legit ut clericus,

^{74 12} Hen. VII, 7.



ideo liberetur ordinario he was not delivered. The dictum of the court in this case was that the real decision in such matters lay with the court and that the ordinary was only present as an officer of the court. This was accepted as law in a case in 1482 when a man who read as a clerk was twice refused by a certain archdeacon. The justices in this instance held the man until a clerical officer who would claim him was appointed to their There is one instance wherein the justices went even farcourt. ther than in those above: it was held that "if a clerk convict or attaint is delivered to the ordinary the custody of him is temporal and not spiritual, for the act is temporal, the judge who commits him is temporal, and the authority [by which he is committed] also." Moreover the king can allow him to make purgation or forbid that he be permitted to do so, or if he chooses "pardon him without any purgation whatever."

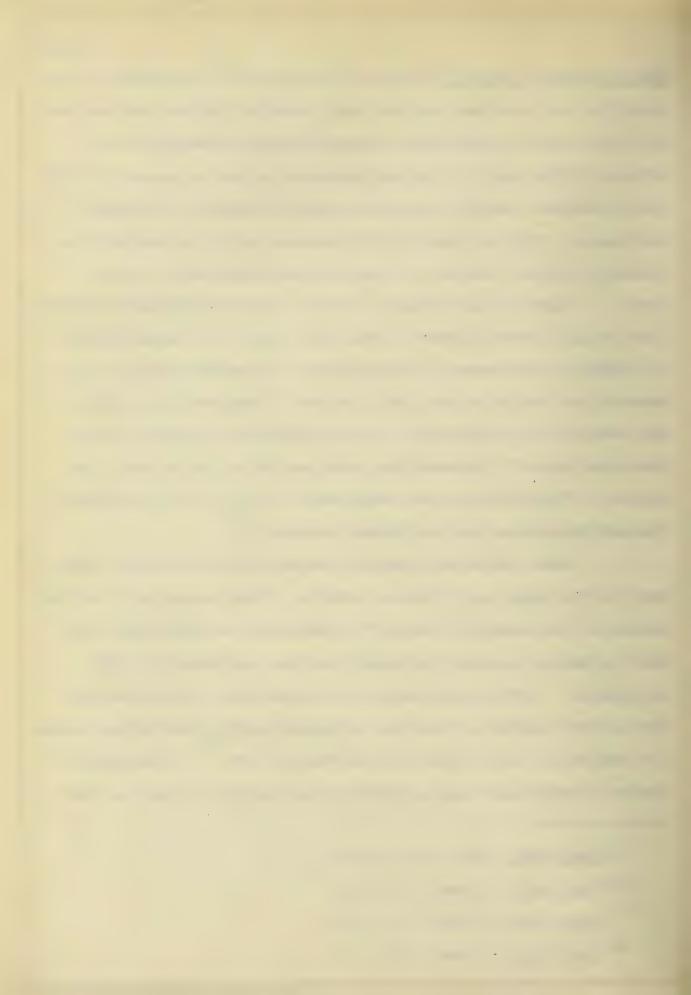
Other rules were established some of which were a detriment to the clergy and others a benefit. They placed an interpretation on the statute of Henry V concerning counterfeiters which made it treason against the king's majesty and therefore not clergyable. On the other hand they agreed that the ordinary of the diocese wherein a clerk was arraigned might successfully claim him whether he was of that jurisdiction or not. On another occasion a judge said that a clerk who had failed to read in court

⁷⁵ Year Book, 9 Edw. IV, p. 28.

⁷⁶ Year Book, 21 Edw. IV, p. 21.

Year Book, 15 Hen. VII, p. 9.

⁷⁸ Year Book, 10 Hen. IV, p. 9



and had been sentenced to be hanged might redeem himself and be delivered to the ordinary if he could read after the sentence was 79 passed even though he proved his literacy sous le gallous.

At the close of the reign of Henry VII benefit of clergy was in a worse position than ever before; it faced the opposition of the king, the parliament, the justices, and the people; the old rule that no clerk could be punished for felony by the secular power had been swept aside; the list of treasons which were cutside the clerical immunity had been expanded; the removal of particular offenses from the privilege had begun; the justices had set themselves up as the real judges of clerkship. The advent of a strong, anti-clerical leader of the forces of opposition might mean the total destruction of the criminal jurisdiction of the church.

Year Book, 34 Hen. VI, p. 49. Note that in the cases above the reading test is recognized as "best evidence."



Chapter VIII

BENEFIT OF CLERGY AND THE CRIMINAL LAW

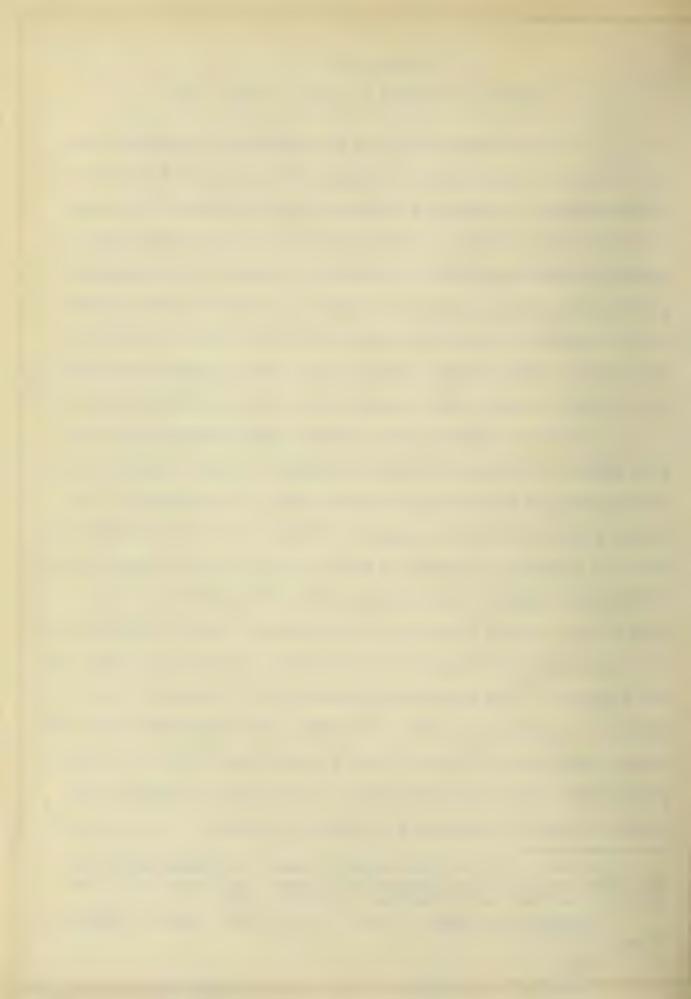
If the clergy hoped for any advantage from the change of rulers they were doemed to disappointment, for the limitation of the number of clergyable offenses begun by henry VII was continued by his successor. The parliament of 1512 enacted that all persons committing murder or felony in a church or on hallowed ground, all persons committing murder or robbery on the highways or in a dwelling house, the owner, his wife, child, or servant being put in fear thereby, should not be "fromensforth admytted to his or their clergy, suche as ben within holy orders only excepte."

ried farther than mere legislation against certain offenses, the whole system of clerical jurisdiction was to be attacked. The clergy protested strongly against the act of 1818 and in 1818 the about of Winchcombe preached a sermon at St. Paul's Cross in which he declared that the statute was clearly in opposition to the laws of God and the liberties of the church, that all clerks were by right exempt from secular jurisdiction, and that all those who had assented to its passage had incurred the censures of the church. Moreover the about published a book supporting his views which, says Bishop Eurnett, "made a great noise, and all the temporal lords, with the concurrence of the House of Commons, desired the King to suppress the growing insclence of the clergy."

⁴ Hen. VIII, 2. This statute was to be valid only until the next meeting of parliament but it was reaffirmed by 28 Hen. VIII, 1, and was made perpetual by 32 Hen. VIII, 1.

Letters and Papers, 7 Hen. VIII, p. 351; Burnet, Reformation, I, 23.

Ibid.

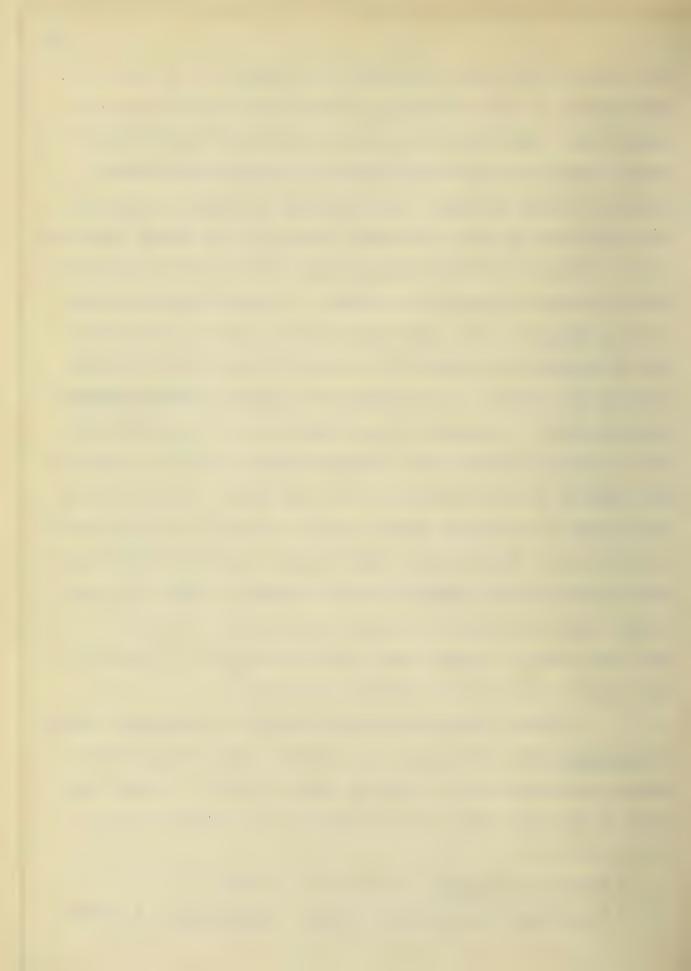


As a result a trial was held before the council of the king. At this debate, Dr. Henry Standish, a Friar Minor, defended the act, arguing that there was nothing in God's law that was contrary to such a practice and that the public good required that crime should be justly punished. The abbot who appeared to represent the church replied that there were decrees of the church "expressly to the contrary." Standish sarcastically replied that there were also a law that commanded all bishops to be at their cathedrals on every feast day; the abbot would not be turned aside by this sort of argument, but keeping to the point, alleged that clerical immunity was founded on the words of the Master: "Nolite tangere christos meos." In reply to this Standish said that these were not the words of Christ but of David who had used them in forbidding heathen to molest people of the true faith. He also argued that canons of the church which were not received in England were without force. The lords who were present considered these arguments conclusive and "desired certain bishops to cause the abbot to make open renunciation of what he had said at St. Paul's." This they refused, "saying that they were bound by the laws of the church to maintain the abbot's position."

A short time later one John Hunne, who had sued a clerk in praemunire was thrown into the Lollard's tower charged with having in his possession a copy of Wyclif's bible. A short time later he was found hanging in his cell. The officers of the

⁴ Letters and Papers, 7 Hen. VIII, p. 351.

⁵ Burnet says his name was Richard. Reformation, I, 24-25.

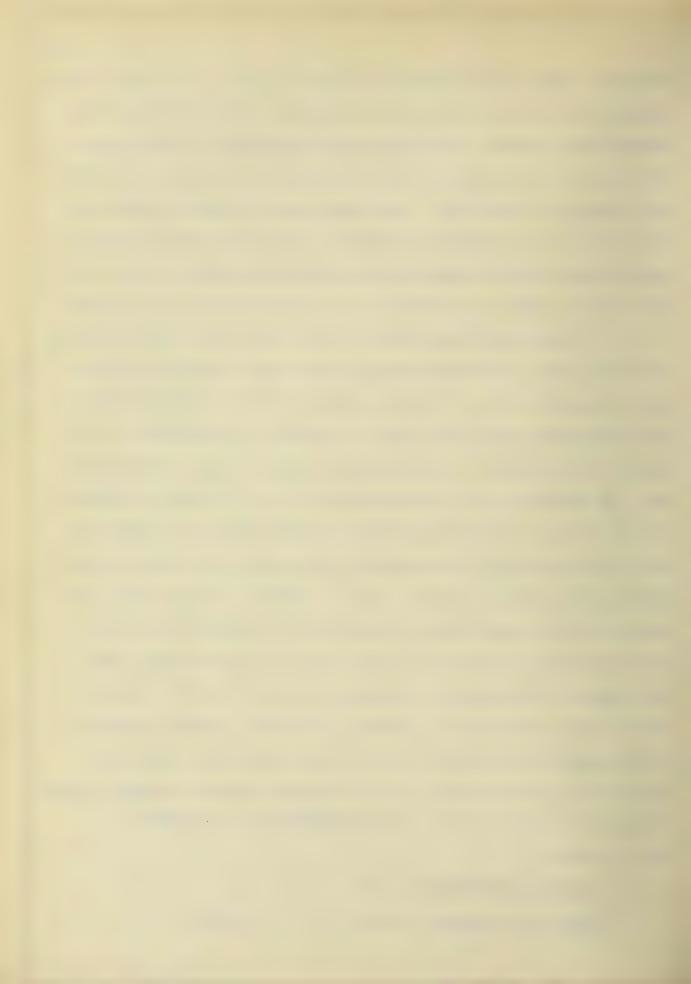


bishop of London who had him in charge gave out that he had hanged himself, but the coroners took a different view and charged the keepers with murder. The latter took sanctuary in Westminster while a court of bishops found Hunne guilty of heresy as charged and burned his dead body. The result was to cause a great stir in London; a bill passed parliament to care for Hunne's family and another, directed against his alleged murderers, failed in the house of lords only because of the opposition of the bishops.

Convocation was then in session and the clergy, feeling "that all their liberties were now struck at" and that Standish was the cause of their troubles, summoned him to answer a bill which was drawn up in the form of a series of questions: "(1) Whether it was lawful for a temporal judge to call clerks before him; (2) Whether first orders are sacred; (3) Whether a constitution by the pope and clergy binds a country where the usage has been to the contrary; (4) Whether a temporal prince can restrain bishops who refuse to punish, etc." Standish sought royal protection on the ground that he had made his statements as the king's spiritual counsel, but the clergy objected saying that they were not calling him to account for this but for opinions which he had expressed in a sermon. The king, wishing further advice, called in the dean of the royal chapel who counselled him that the clerks might be brought before secular judges without offense to the law of God or the liberties of the church.

⁶ Burnet, Reformation, I, 27.

⁷ Letters and Papers, 7 Hen. VIII, p. 351-352.

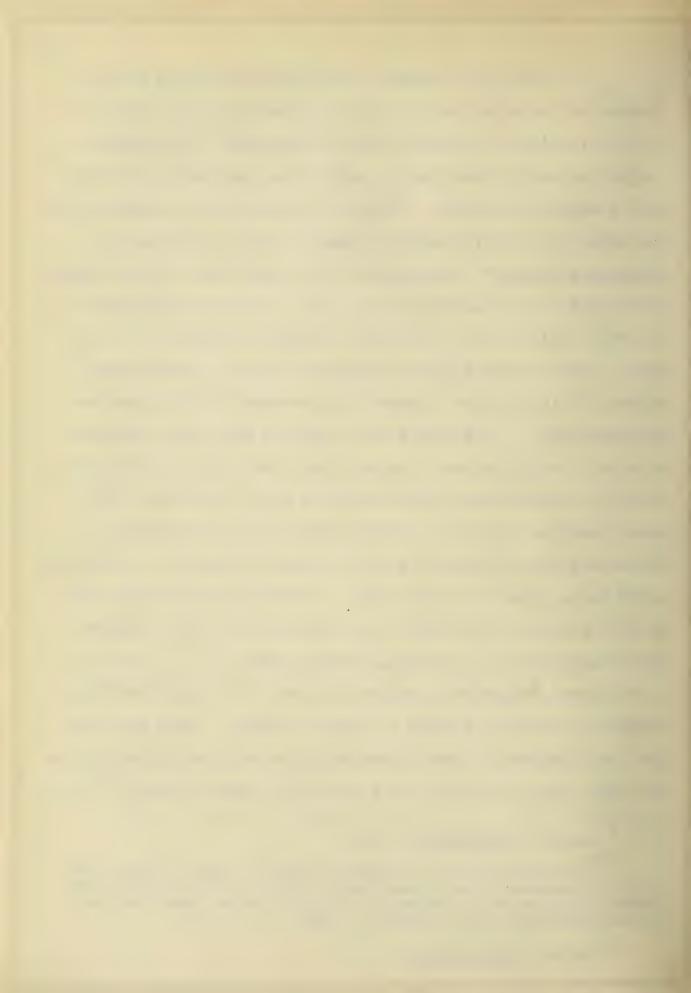


At the trial Standish defended himself ably and his counsel put especial weight on the allegation that a canon to be of any effect in England must be "received." The secular judges who were present held a session and announced a decision that startled the clergy: "That all those of the convocation who did award the citation against Standish were in the case of praemunire facias." This brought the whole body of the bishops before the king to assure him that they intended no derogation to the royal majesty and to beg him to refer the question to the pope. Henry answered that it appeared that Dr. Standish and others of his spiritual counsel had answered all the questions satisfactorily. The king's chief justice said that felony was a matter for the temporal law and that clerks should either be tried in the temporal courts or not at all. Then Henry VIII made clear his position: "By the permission and ordinance of God we are king of England and the kings of England in times past never had a superior but God only. Therefore know you well that we will maintain the rights of our crown, and of our temporal jurisdiction in this, as in all other points As for your decrees we are well assured that you of the spirituality go expressly against the words of divers of them ... and you interpret your decrees at your pleasure, but we will not agree to them any more than our progenitors have done in former times."

⁸ Burnet, Reformation, I, 30.

The archbishop of Canterbury began to talk of martyrdom at this juncture: "in former times divers holy fathers of the church had opposed the execution of that law and some had suffered martyrdom in the quarrel." Ibid.

Burnet, Reformation, I, 31.

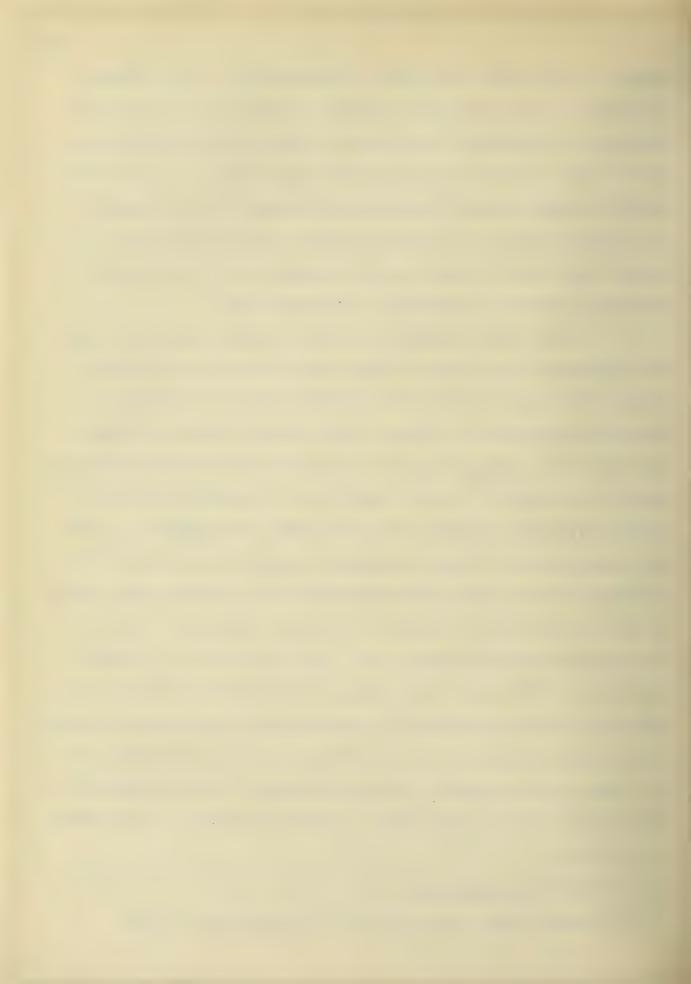


outcome of the whole matter was unsatisfactory to the clergy; the question involved was not settled, except in so far as the king and the parliament had shown the intention of maintaining their right to pass laws against criminous clerks. By the king's order the case against Standish was dismissed by convocation; the churchmen accused of murdering Hunne were brought before the king's bench where, after they had pleaded to the indictment the attorney general, by agreement, dismissed them.

After this actual hostilities between church and state were suspended for a time but were soon revived on a different though very similar ground. The right of sanctuary which had become as burdensome to the lay power as had benefit of clergy was called into question and in the years 1519-1520 was constantly before the council. But it must not be understood that the people were easily quieted. The reformers, the judges, and the anti-church party at large constantly agitated the question of clerical immunity giving their arguments the form that was likely to be most attractive to those in temporal authority. One of the reform leaders, Tyndale, said: "If the office of princes given them by God, be to take vengance on evildoers then by this text and by God's word are all princes damned, even as many as give liberty and license unto the spirituality to sin unpunished and not only open sanctuaries, privileged places, and churchyards ... yet also set forth a neck verse to save all manner of trespassers

¹¹ Burnet, Reformation, I, 32.

¹² Gasquet, Eng. on the Eve of the Reformation, 51-55.



from the fear of the sword of the vengance of God put into the 13 hands of princes to take vengance on all such." Again he says to the churchmen: "They have a sanctuary for thee to save thee; yea and a neck verse if thou canst read a little Latinily, though it be ever so sorrily so that thou be ready to receive the beast's 14 mark." In his answer to Sir Thomas More he taunts the latter, reminding him that benefit of chergy would be of no service to him because he was bigamous and "past the grace of his neck 15 verse."

In spite of the popular agitation it was not until the meeting of the Reformation Parliament that the actual attack upon benefit of clergy was renewed. In 1530 one Richard Roos a cook mixed "a certyn venym or poyson" into a porridge which was served to the household of the bishop of Rochester and the remnants of which, according to the custom, was distributed to the poor. Several persons sickened and two died as the result. Roos was attainted, as of high treason by the parliament and it was enacted "that the said Richard Room shalbe boyled to deathe without havynge any advauntage of his clargie." The act then condemned all poisoners to a similar fate. In the same year the act pardoning the clergy of the province of Canterbury for their

Tyndale, <u>Doctrinal</u> <u>Treatises</u>, 180. The verses which the prisoner claiming benefit of clergy was usually required to read was the fifty-first Psalm and this became known as the "neck verse."

^{14 &}lt;u>Ibid.</u>, 213. Tyndale probably referred to the brand as the "beasts mark."

¹⁵ Tyndale, Answer to Sir Thomas More, 165.

^{16 22} Hen. VIII, 9.



offenses in <u>praemunire</u> in consideration of a fine of L 100,000, and also including a general pardon, expressly provided that it was not to extend to any clerk who was awaiting purgation in the 17 prison of an ordinary.

A year later came the long threatened action which was to be taken in case the ordinaries persisted in releasing clerks without due purgation. The preamble of the statute speaks of the warning issued to the clergy by Edward I and of the unfulfilled promise of the churchmen to submit a constitution concerning purgation to Henry IV, and adds that instead of being made more difficult the release of ecclesiastical criminals had become easier, with the result that crime has been greatly increased. In view of this fact it is provided that no person save those actually in hely orders should be admitted to benefit of clergy, if accused of wilful murder, with malice perpensed, robbing churches or holy places, robbing persons in their dwellings, stealing grain from barns, burglary in a dwelling anyone therein being put in fear, burning a dwelling or a barn containing grain or corn, or of aiding, procuring, helping, or counselling the above felonies. The accused if in hely orders was to be delivered to his ordinary to remain in prison without purgation, unless he could find two sureties who would bind themselves by lands worth over twenty-five shillings or movables valued at over forty pounds to assure that the clerk convict would keep the peace in the future. Clerks who had confessed or had been outlawed were not allowed the privilege

^{17 22} Hen. VIII, 15, sec. 12.



18

of finding sureties. The act was made to extend only until the 19 next meeting of parliament, but it was later made perpetual.

Another act of the same year commanded that all clerks below the order of subdeacon who should break prison were to be judged and punished by the justices in the same manner as lay offenders; clerks in holy orders guilty of this offense were to be delivered absque purgatione.

Crime after crime, some already existing, some created by statute were withdrawn from benefit of clergy in the remaining 21 years of Henry's reign; sodomy, piracy and roobery on the high 22 seas, embezzlement by servants of their masters goods to the 33 value of forty shillings, preaching against the Five Articles, practicing sorcery to discover hidden treasure, to injure any 25 person, or to provoke illicit love, burning frames or timber intended for houses, "stealing any horse, gelding, mare, foole or filley" and distributing any unsigned writings concerning the 28 king were all withdrawn from the privilege and some second offenses such as holding an opinion against the Five Articles or 29 the keeping of concubines by priests were also excluded. The

^{18 23} Hen. VIII, 1. Extended to Wales by 26 Hen. VIII, 12.

^{19 32} Hen. VIII, 3.

^{20 23} Hem. VIII, 11.

^{21 25} Hen. VIII, 6.

^{22 27} Hen. VIII, 4, and 28 Men. VIII, 15.

^{23 27} Hen. VIII, 17.

³¹ Hen. VIII, 14.

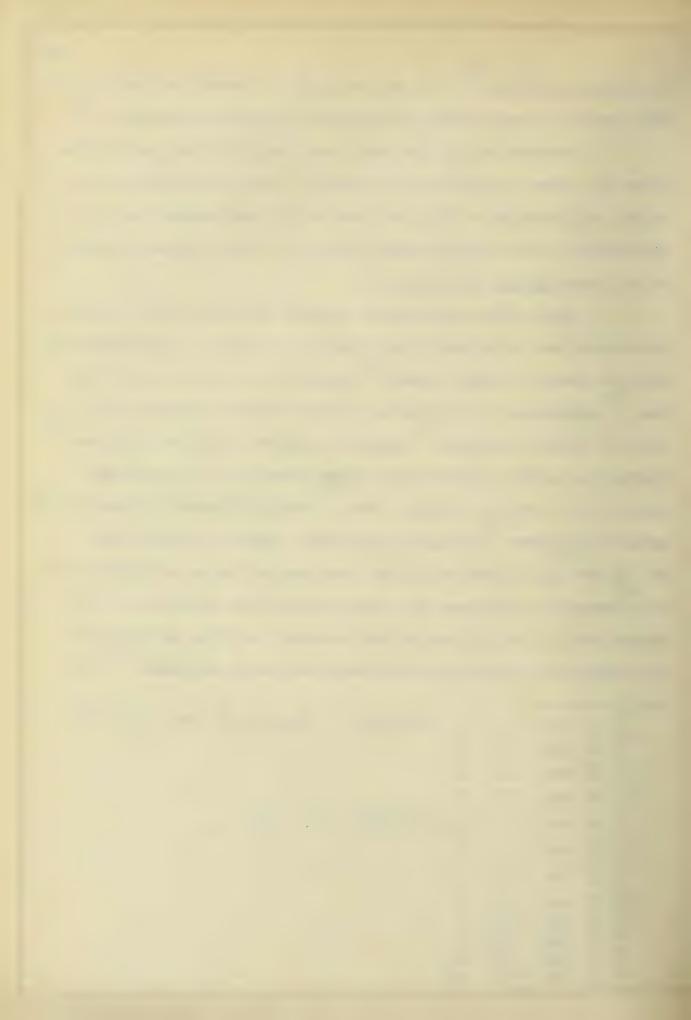
^{25 33} Hen. VIII, 8.

^{26 33} Hen. VIII, 6.

^{27 37} Hen. VIII, 8.

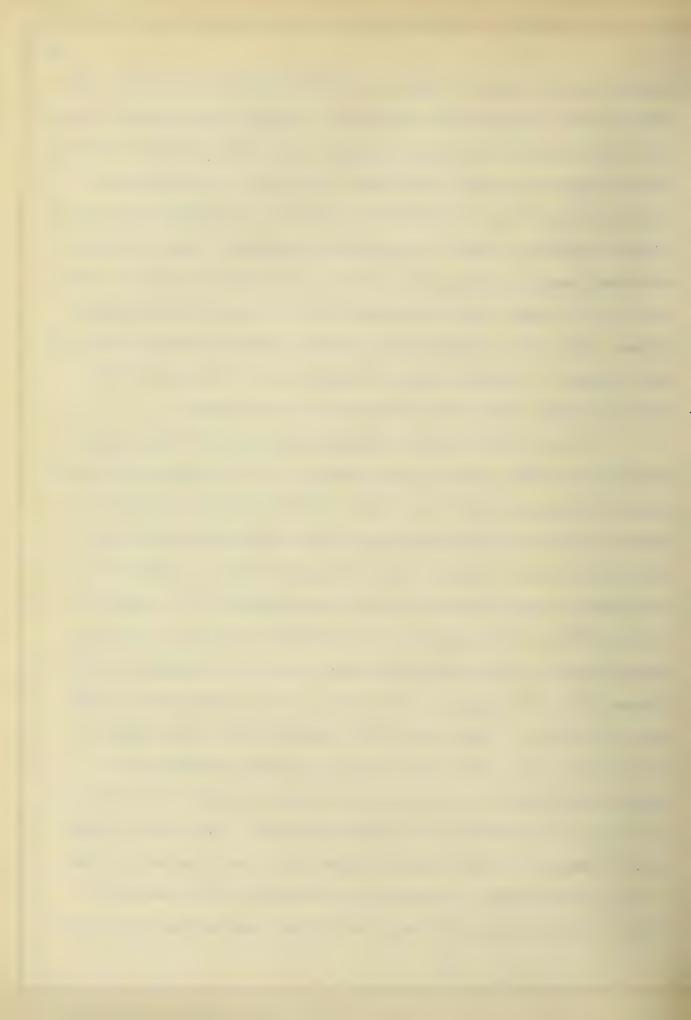
^{28 37} Hen. VIII, 10.

^{29 31} Hen. VIII, 14.



actual statement that a crime was without benefit of clergy was not the only method used to limit the clerical immunity; 26 Henry VIII, 13 added numerous new offenses to the list of high treasons, such as imagining harm to the king, the queen, or their heirs, denouncing the king as a schismatic tyrant, or holding fortresses or ships after an order to surrender possession. Some of these statutes, enacted before 1540, were to be valid only for a given time, but in that year by 32 Henry VIII, 3 they were made perpetual. This same statute provides that "such persones as ben in holy orders ... shalbe brent in the hand, in like manner and fourme as laye clerks ben accustumed in such cases."

But Henry, once the reformation was under way, was not satisfied to assail the legal procedure of the clerical privilege alone; he attacked the idea itself. That churchmen should be immune from the criminal tribunals of the secular power was a canon of Rome and the duty of the English clergy to resist infringment on that immunity had been sanctified by the martyricm of Saint Thomas, the greatest of the English saints. From his murder had grown the Becket tradition which the churchmen had flouted before the face of every king who had attempted to limit their privilege. Henry must have realized that this tradition stood in the way of his claim to the complete sovereignty of England and that only the man who was strong enough to break it could hope to establish the royal supremacy. This idea, as well as the thought of the financial gains that could be made by such a step, led the king to order the destruction of the shrine of Becket "after calling the saint a traitor, condemning him as con-



tumacious and proclaiming him a rebel." It is said that a mock 31 trial was held at the tomb before the desecration took place and it is not at all unlikely that such a trial was held but 32 whether it was merely a mockery or not may well be questioned.

St. Thomas had been the great defender of the inherent rights of Rome and of the clergy, Henry was the high advocate of royal supremacy; it was the task of the latter to destroy the work of the former and there is no reason to believe that the trial of the martyred Becket was less serious than that of the living who supported his cause.

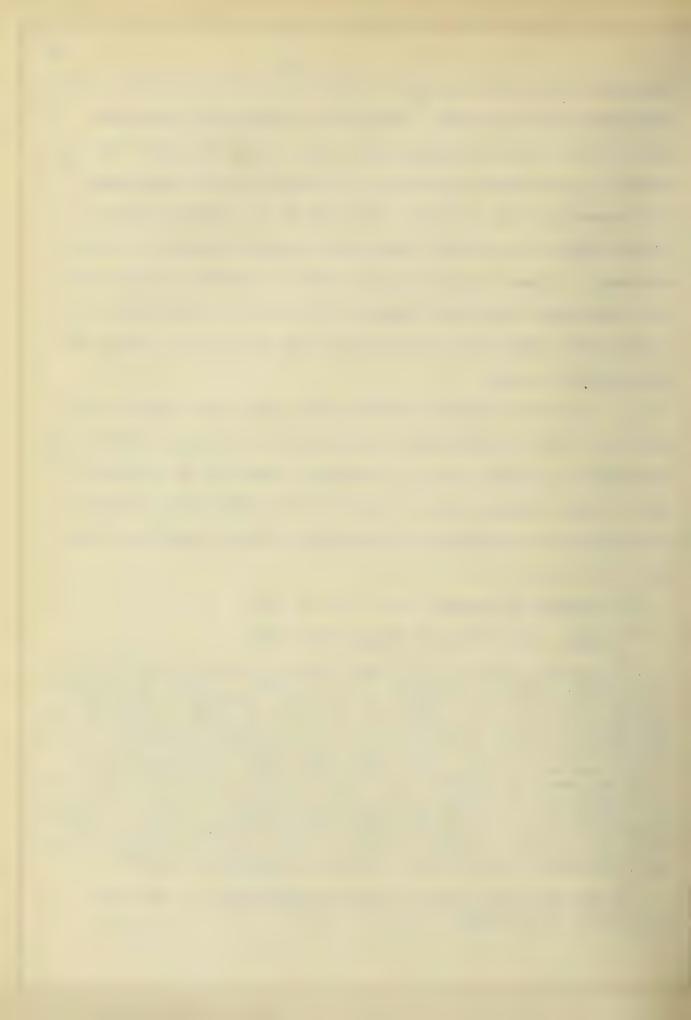
The new treason statutes which took such crimes as the denial of royal supremacy and criticism of the king's actions out 33 of benefit of clergy led to a wholesale execution of churchmen; but the anti-clerical party, which had been developing through a long period, was strong in the support of its leader and there

³⁰ Letters and Papers, Hen. VIII, p. 459.

³¹ Ibid., xlii; Pollard, Henry VIII, 372.

the process against the martyr is as follows: "Henry by the Grace of God King of England France and Ireland, Defender of the Faith and Supreme Head of the Church of England; We cite you Thomas, who was once Archbishop of Canterbury, to our supreme council, to plead concerning the cause of your death, the scandals which you committed against the king, our predecessor, and the injustice by which you were arrogated to the name of martyr, which you acquired by rebellious and contumacious conduct against the king's majesty, [such] as we hold today we cite you to hear sentence and if there be no one who will appear for you we will proceed to judgement as our laws ordain and dispose." Wilkins, Concilia, III, 847.

³³ See the long lists in Burnet, Reformation, I, 278 ff; Holingshed, Chronicles, III, 774, 793, 819.

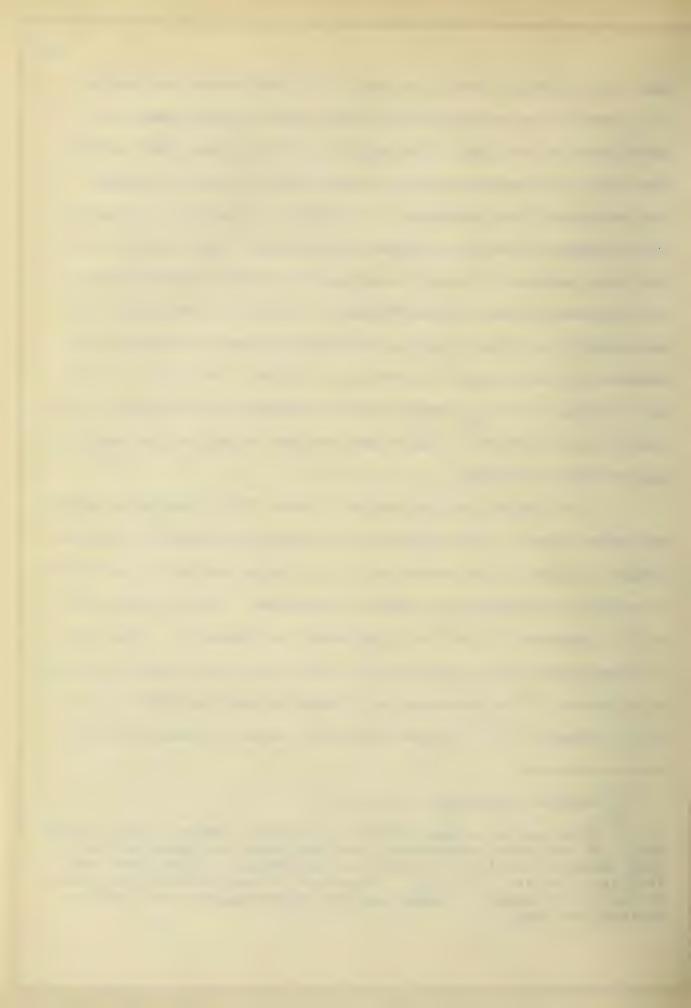


was little thought among the people of questioning the justice of a persecution established by laws passed by parliament and sanctioned by the king. The majority of the clergy bent before the storm but there were some who were bold snough to condemn the actions of the government. In 1536 the clergy of the north in convocation drew up a series of protests: they objected to the royal seizure of church lands and the royal supremacy and they refused to grant first fruits or tithes to the king or to parliament; the fourth article of their protest maintained the immunity of the clergy from secular justice: "we think that no clerk shoul, be put to death without degradation according to the 34 laws of the church." This was the last organized protest against the new régime.

by the end of the reign of Henry VIII a complete change had taken place in the character of benefit of clergy; it was no longer a right of the church but a privilege granted by the state to certain individuals in certain instances. This is borne out by the statutes of the first parliament of Edward VI. The first of these acts simply continued the old system, with some limitation: no crime was to be construed as treason unless included in the 35 act of Edward III; the new felonies created by Henry were re-

³⁴ Wilkins, Concilia, III, 812.

This provision was limited by another section which placed denial of the royal supremacy, the imagining the death of the king, and the holding of ships and fortresses, in the same position as by 26 Hen. VIII, 13. Moreover it was provided that there should be no repeal of penalties for crimes against the coin or against the seals.



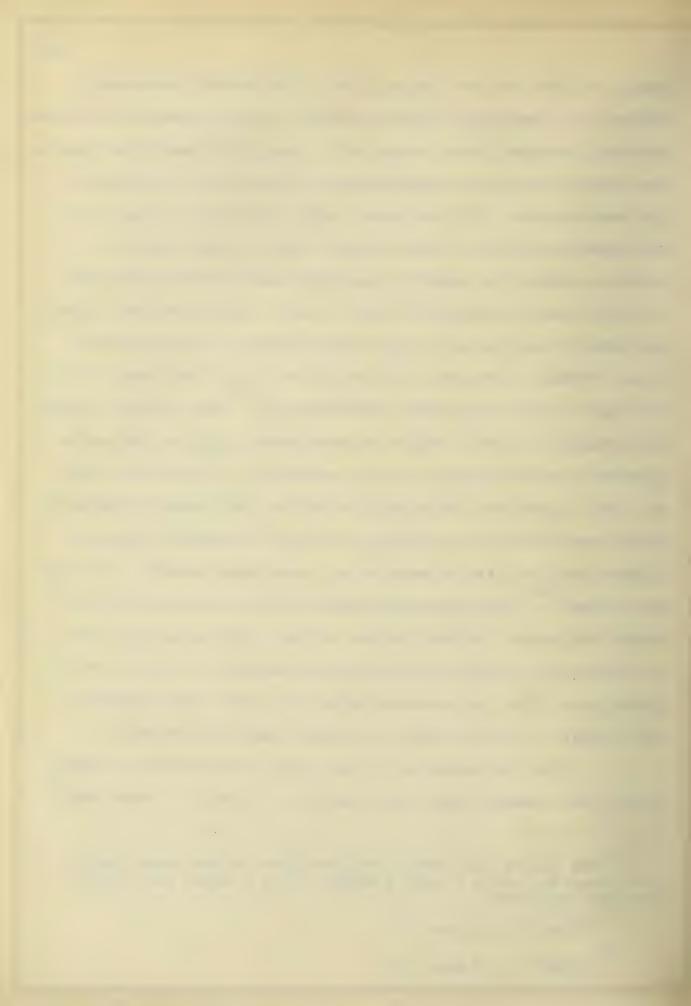
pealed but the statutes taking clergy from murder, poisoning, robbery in a dwelling, highway robbery, and the "stealing of horses geldings, or mares" were reënacted. A real blow was struck against the church when the old replication of bigamy was cast aside by the same statute: "If any person ought to have or be admitted to the benefice of his or their clergy, that the same parson or parsones shalbe from hensforth admitted and allowed to have his or their clergy, although he they or any of them have been divers and sondry times married to any Single Woman or Single Woemen, to any Wydowe or Wydowes or to two Wifes or moo; any Law, Statute or Usage to the contrary not withstanding." Even better evidence that benefit of clergy was to be considered a gift of the state appears in another section of the same act: it was enacted that any lord or peer who had a right to sit in parliament "thoughe he cannot reade" should enjoy the privilege of immunity from punishment for his first offense in any case where benefit of clergy was allowed. This privilege was to be granted after a trial before his peers. Before the end of the reign the majority of the offenses to which clergy had been restored by this act were again placed upon the non-clergyable list and a large number of new felonies without benefit of clergy had been created.

With the accession of Mary there was another wholesale repeal; all treasons save those defined by Edward III were swept

The judges held that this provision did not take clergy from those who stole a single animal; this statute was remedied the next parliament.

³⁷ 1 Edw. VI, 12, sec. 15.

^{38 1} Edw. VI, 12 sec. 13.

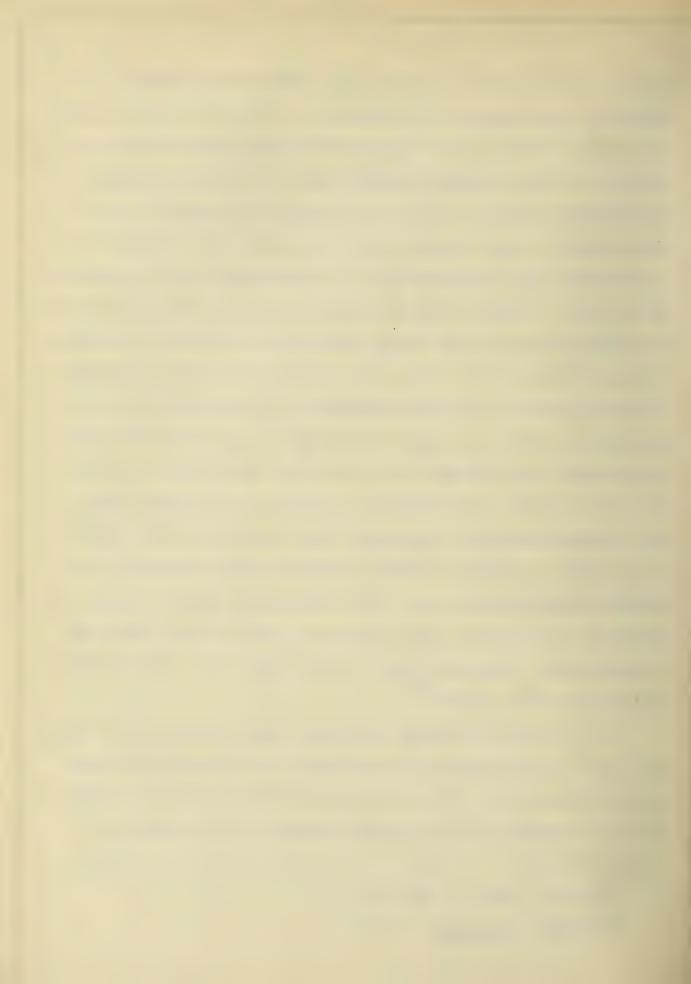


away, and the felonies created since 1509 were abolished. clergy of the province of Canterbury in 1557 accepted as a matter of course a trial in the secular court before the delivery of a clerk to the ordinary and promised that the priests, deacons, or subleacons delivered to the church should be allowed but one opportunity to make purgation; if the result of this trial was unsuccessful the churchman was to be imprisoned for the remainder of his life. Clerks of bad reputation were not to be admitted to immediate purgation even though there was not sufficient evidence to convict them of the crimes for which they had been convicted in the lay courts. In such instances the accused was to be imprisoned in irons for a year; three days of each week during his imprisonment his fare was to be bread and water; when the year was over he was to be admitted to purgation in the usual way; but the ecclesiastical judges were cautioned to proceed carefully and to hear all parties before pronouncing him innocent of the offense charged against him. The convocation further limited the claim of the church to judge clerks to those in holy orders and those in minor orders who wore clerical habit and tonsure before the time of their arrest.

It does not appear that Queen Mary, ardent papist though she was, had any intention of restoring the clerical privilege to its old position. It may be deduced from the acts of repeal that she intended to show greater respect for the immunity of

^{39 1} Mary, stat. 1, chap. 1.

⁴⁰ Wilkins, Concilia, IV, 163.



that their system, if less agreeable to the church, was more pleasing to the people and more beneficial to the state. In some cases she attempted to follow precedents of Henry VII and take clergy away from those who committed particularly atrocious crimes. In 1554 one Benet Smith after failing in several attempts to obtain the conviction of a personal enemy upon false criminal charges procured his murder; by a special statute it was ordered that Smith, if found guilty, "should be put from his clergy."

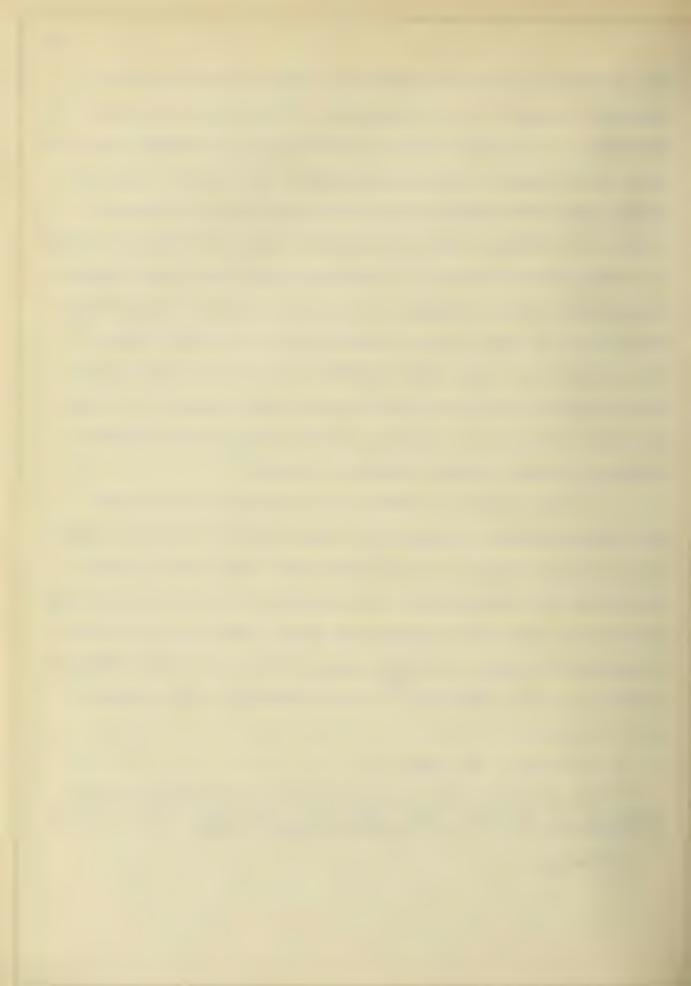
This system must have proved inefficient for Mary almost immediately adopted the Tudor plan of legislating against the offense and before the end of her reign several statutes were enacted creating offenses without benefit of clergy.

There can be no doubt of the attitude of Elizabeth and her parliaments: benefit of clergy was not to be considered as a class privilege. In the first year of her reign the exclusion of old offenses from the clerical privilege and the creation of new ones without benefit of clergy began and the process continued throughout the whole reign. More than twenty offenses 43 varying in gravity from rape to the exportation of hides and

^{41 2 &}amp; 3 Phil. and Mary, 17.

One of these laws making it a felony for "Egyptians" to remain in the kingdom longer than forty days after being ordered to depart was still on the statute books in 1824,

^{43 18} Eliz., 6.

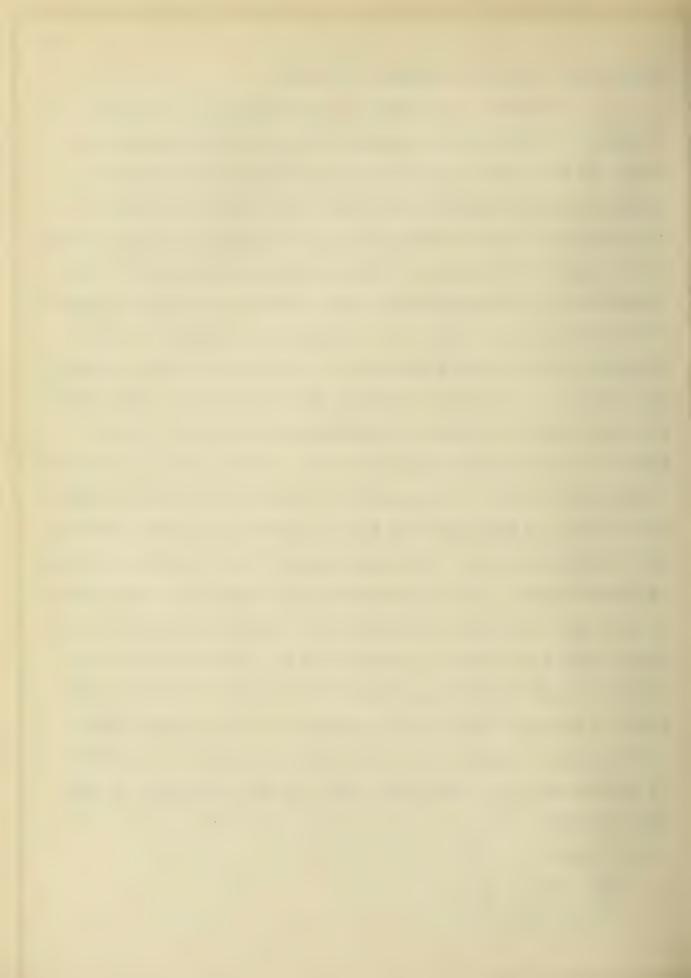


tallow were made non-clergyable felonies.

If benefit of clergy is to be defined as the right of clerks to be tried in the church courts, the privilege came to an end in 1578 when the right of the ecclesiastical courts to exercise any jurisdiction over felons was ended by statute. In this year "for the avoyding of sundrye Perjuries and other Abuses in and about the Purgacion of Clerks Convicte delivered to the Ordanaries" it was enacted that every person who should be admitted to benefit of clergy "shall not thereupon be delyvered to the Ordinarye as hath been accustomed but after such Clergie allowed, and burning in the Hande accordinge to the Statute in that Behalf provided, shall forthwith be enlardged and delivered owte of Pryson by the Justices before whom such Cleargie shall be graunted. " It was provided that the justices who allowed the plea of clergy might order the clerk convict kept in prison for a term that was not to exceed a year. The importance of this statute can hardly be overestimated; the ecclesiastical courts had lost their right to pass upon the guilt or innocence of persons who had been found guilty before the secular justices and the right to punish the clerk remained with the lay courts alone; benefit of clergy had become a mere mitigation of the severity of the criminal code, a privilege of escaping the death penalty granted by the state to persons who could read after they had been convicted of certain offenses.

^{44 1} Eliz., 10.

^{45 18} Eliz., 6.



It was along this line that benefit of clergy was to proceed in the future. The English criminal law, never a gentle code, had increased in severity under the Tudors and there was a gradual addition of capital felonies throughout the Stuart period. Offense after offense, some of them grave crimes, others only slight misdemeanors were made felony without benefit of The process was made difficult by the wording of the various statutes, and the judges who, by their methods of construction, had done so much to limit the privilege of olergy sometimes found themselves in a new position. Definite statutes saying that certain things should be done had been passed and the judges acted upon the assumption that the common law was to apply in all cases which did not fall within the exact limits set by the new laws. The man accused of crime might come before the bar as principal or as accessory before or after the fact; upon arraignment he might stand mute and be pressed to death, challenge too many jurors and be hanged, plead guilty, be convicted by a jury or be attainted. "If a statute taking away clergy did not expressly mention all of these possible cases and take clergy away from them all, both from the principal and his accessories before The and after the fact, clergy remained in every omitted case. result of this was to make the petty quibbles concerned with bene-

⁴⁶ Mayhem, the last of the common law felonies, was ousted from clergy by 22 & 23 Chas. II, 1.

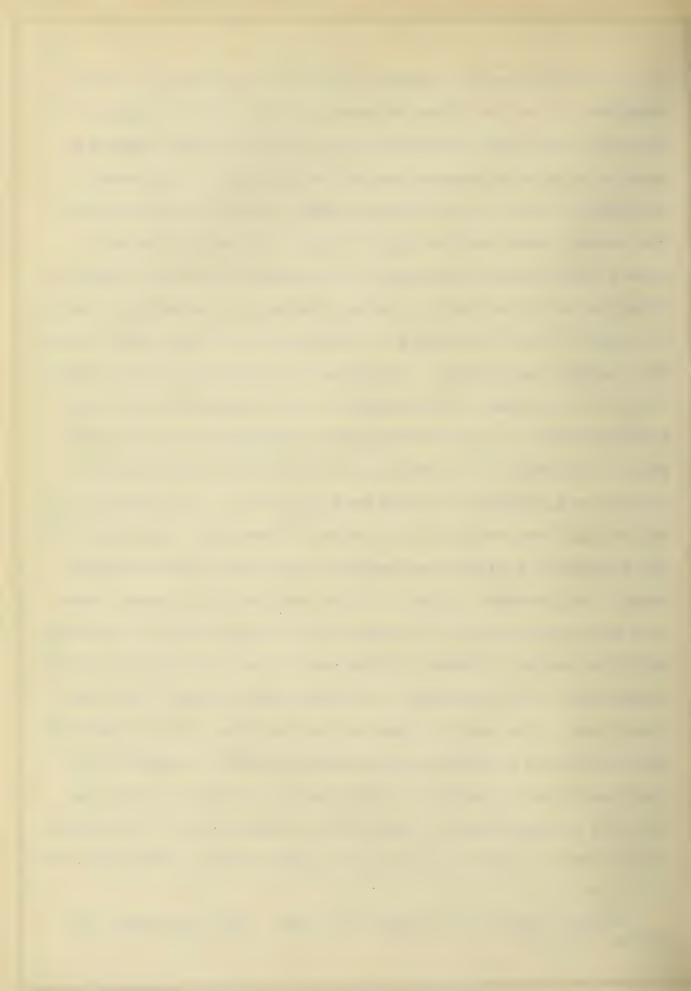
⁴⁷ Anon, 1 Dyer, 99a (73 Reprint, 216).

⁴⁸ Stephen, Criminal Law, I, 466.



fit of clergy even more frequent than those appearing in other branches of the law. Thus in cases arising under the statute of 23 Henry VIII, which provided that clerks not in holy orders who were principals or accessories before the fact, if confessed or convicted of any of the offenses stated, should be punished by the secular power despite their clergy, the justices acted in accord with the exact wording of the statute; clerks who were accessories after the fact, or were principals or accessories before the fact, if they stood mute or challenged more than twenty jurors were allowed their clergy. Moreover by the wording of the statute those in holy orders who confessed or were cutlawed for non-appearance were to be delivered absque purgations, but nothing was said of abjuration. In consequence those who returned to the country in defiance of the law were delivered to the church just Even when confronted with as they had been under the old system. the failure of justice that resulted from their imperfect enactments, the lawmakers failed to adopt more carefully worded measures and the difficulties arising out of construction of statutes depriving certain classes of offenders of the privilege of clergy lasted until the beginning of the eighteenth century. The technicalities in the various laws were so numerous that Sir Matthew Hale found that he needed nearly seventy pages to explain the exact position of benefit of clergy as it stood in his day; and even his long and careful exposition is almost beyond the comprehension of the layman. In 1891 the first serious attempt was made

⁴⁹ Hale, Pleas of the Crown, II, 338. This was remedied by 25 Hen. VIII, 3.



to clear up this situation: it was enacted that the clergy should be denied to malefactors brought before the justices for non-clergyable offenses without regard to their attitude before the 50 court or to the nature of their conviction. Even this statute had its weaknesses for it did not extend to accessories and applied only to felonies existing "by virtue of a former statute." These faults were remedied by later enactments.

Difficult as it is to find a simple statement of the law at any fixed period some evidence may be drawn from the works of the minor commentators and from the dicta of the justices at 51 52 various occasions. Writing in 1827 Sergeant Finch says: "He that is or by possibility may be in orders if he shall show them or the ordinary certify so much, may have his clergy whether he can read or no; otherwise he must be able to read a verse to save him from judgment when the clergy is prayed before, or from execution when it is prayed after." Turning to the limitations on the privilege Finch decides that a clerk in orders may have his clergy, save in the excepted cases, as many times as he may offend, despite a previous burning in the hand, always providing that he is able to produce his letters of ordination when they are demanded by the judge. The lords of parliament are for first

^{50 2} Will. and Mary, 9, sec. 2.

Such reports as that of Powlters Case, 11 Coke, 29a (77 Reprint, 1181), give general views of particular branches of the law.

⁵² Finch, <u>Law</u>, 462 ff.



offenses to be dismissed without reading or burning in all cases save murder and poisoning. Under the head of "Perogative" Finch says: "A clerk convict forfeits his chattels and shall never have restitution though he make purgation." After these general statements the writer turns to the law in specific offenses and becomes involved in the same difficulties as his successor hare, though to a less degree.

The justices were strict in their interpretation of the law, not only in determining whether clergy was denied by statute, as has been noted above, but also in the definition of offenses and in the interpretation of the indictment. If a man was indicted for taking money from another in the highway and there was no allegation of violence on the part of the robber or fear on the part of the victim, it was held that clergy should be allowed. A man who was indicted for burglary and proved that he stood outside the house, while his companion entered, was given his clergy on the ground that his offense was not within the statute of Elizabeth which denied clergy to burglars. Until 18 Elizabeth every indictment for burglary had to allege that someone within the house was put in fear. If a prisoner who failed to read on one trial could gain another hearing and could then read he was allowed his clergy even though he learned in jail, but the jailers were to be fined. If a man was charged with murder and the in-

⁵³ Anon, 2 Dyer, 224b (73 Reprint, 496).

⁵⁴ Evans and Finchs' Case, 1 Cro. Case, 473 (79 Reprint, 1009). 39 Eliz., 15 took clergy from breaking a house and stealing over five shillings therein.

⁵⁵ Anon, 2 Dyer, 205b (73 Reprint, 453).



dictment lacked the word malicious, he would be found guilty of homicide and would be allowed his clergy. These are but a few examples of the strictness of interpretation which the justices put upon the statutes.

There is some evidence as to the operation of the criminal statutes during the last years of Elizabeth's reign. In the year 1598 in Devenshire, 134 prisoners were arraigned before the justices at the Lent assizes; of these seventeen were hanged, twenty were flogged, sixteen were liberated by pardon, and sleven were allowed their clergy. "At the Epiphany sessions preceding there were sixty-five prisoners of whom eighteen were hanged. At Easter there were forty-one prisoners and twelve of them were executed. At Midsummer there were thirty-five prisoners and eight hanged. At October sessions there were 25, of whom only one was hanged. Altogether there were 74 persons sentenced to be hanged in one county in a single year." This shows that the law was ineffectual in suppressing crime in spite of its apparent severity.

As the process of limitation as to offenses continued, a contrasting policy was in progress, that of increasing the number of persons who might claim the privilege when the crime committed was clergyable. In 1622 because many women, excluded from clergy, suffered death for small offenses, it was enacted that those confessed or convicted of the theft of more than twelve pence and less than ten shillings be admitted to their clergy and released after branding in open court and being further punished

⁵⁶ Hamilton, Quarter Sessions, 30-31.



by whipping, stocking, or imprisonment at the discretion of the court. This statute applied only to petty larceny and it was not until 1692 that they were admitted to clergy on the same focting as men. The final extension of the right to enjoy benefit of clergy was made in 1708 when the reading test was abolished. "Forasmuch as when any Person is convicted of any felony within the Benefit of Clergy upon his prayer to have the Benefit allowed to him it hath been the custom to administer a Book to him to try whether he can read as a clerk, which by experience is to be found of no use ... if any person be convicted of any such felony for which he ought to have had the benefit of clergy if this act had not been made, and shall pray to have the benefit of this act, he shall not be required to read, but without any reading shall be allowed, reputed, and taken as a clerk convict which shall be as effectual to all intents and purposes and as advantageous to him as if he had read as a clerk." This same act provided that persons admitted to their clergy might be sent to houses of correction for terms of not less than six months or exceeding two years at the discretion of the magistrates.

In cases where the benefit was allowed there was also a constant change in the penalties which the judges might inflict.

According to the act of 1487 clerks convict were to be branded upon the thumb before they were released by the secular court. In 1693 it was ordered that the branding should be done upon the left

^{57 21} Jac. I, 6.

^{58 6} Anne, 9. This statute is generally cited by the commentators as 5 Anne, 6.



cheek. It was soon found that the result of this change was to make the victim more liable to offend again than he had been under the former system and so, after six years, the new law was repealed. In 1717 the judges were allowed a discretionary power to substitute transportation for seven years for branding and im60
prisonment, and, after further substitutions made near the end
61
of the century, the practice of burning was abandoned entirely.

During the period between the death of Anne and the abolition of the privilegs of clergy the number of offenses in which clergy was allowable was steadily diminished and at the same time dozens of new offenses were created without benefit of clergy. The English criminal law became, during the eighteenth century, the most severe code in the civilized world. Blackstone estimates that in his day there were 160 capital offenses and Mackintosh urging reform in 1819 stated that there were at that time 200 felonies punishable by death. Sir Fitzjames Stephen says that if properly classified the number of offenses would have been greatly reduced, and adds that it was the constant recurrence of the death penalty in the statute that made the harshness of the code so noticeable when a few general enactments might have been much more severe than the great number of special ones. This is no doubt true, but it must be admitted that a code which assessed the same

^{59 10 &}amp; 11 Will. and Mary, 23.

^{60 4} Geo. I, 11.

^{61 19} Geo. III, 74, sec. 3.

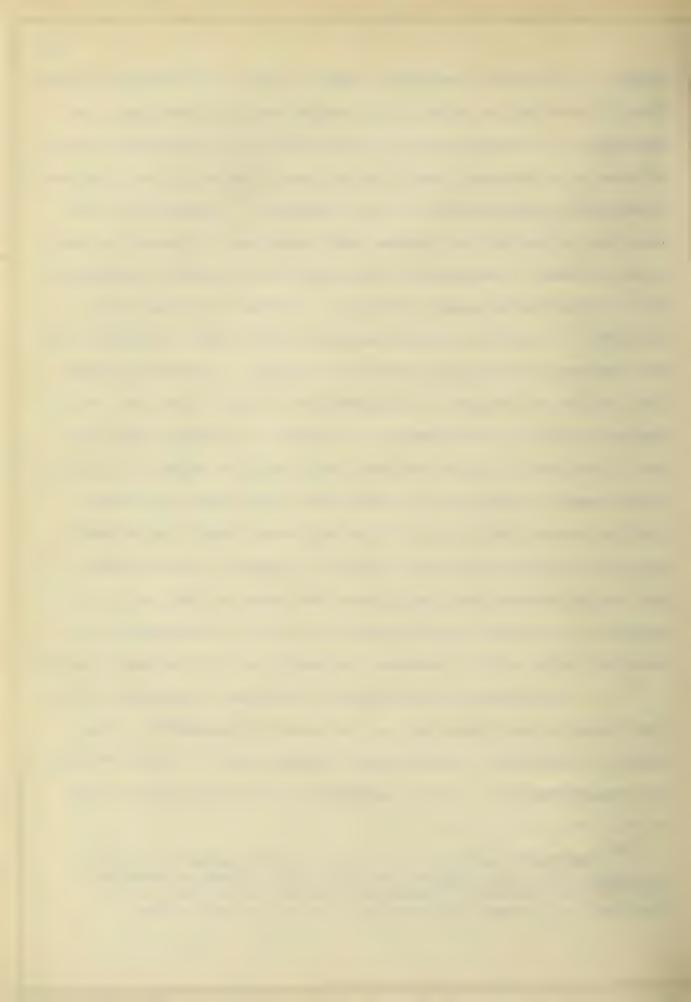
⁶² Stephen, Criminal Law, I, 470-471.



penalty for forging stamps and stealing from the bleaching grounds that it provided for rape or for murder was both harsh and inequitable. The severity and the injustice of the law led to difficulties of enforcement even greater than those which had come about through the interpretation of the statutes. Persons who had been the victims of the thieves were reluctant to prosecute when to ic so meant to assume the responsibility of taking human life for a comparatively slight offense. Likewise it became very difficult to convict a person accused of the lesser offenses which had been removed from the benefit of clergy. It often happened that juries, as judges of all questions of fact, when sent out to decide the guilt or innocence of a thief or a burglar would return a verdict of guilty but would add that the value of the goods stolen was less than the five shillings which was the minimum limit at which clergy might be denied, even though the evident worth of the stelen property was far in excess of that amount. It was the failure of justices in such instances as well as the inhumanity of the code that led Romilly, Peel, and Mackintosh to urge the reform of the criminal law early in the nineteenth century,

The practice of benefit of clergy as it existed in its last years is best described in the words of Blackstone: "All clerks in orders are, without any branding, and of course without any transportation ... to be admitted to this privilege and im-

The recent article by Mr. A. L. Cross appearing in the American Ristorical Review, for April, 1917 gives an excellent view of the operation of benefit of clergy as a part of the criminal law between 1705 and the time of its abolition.



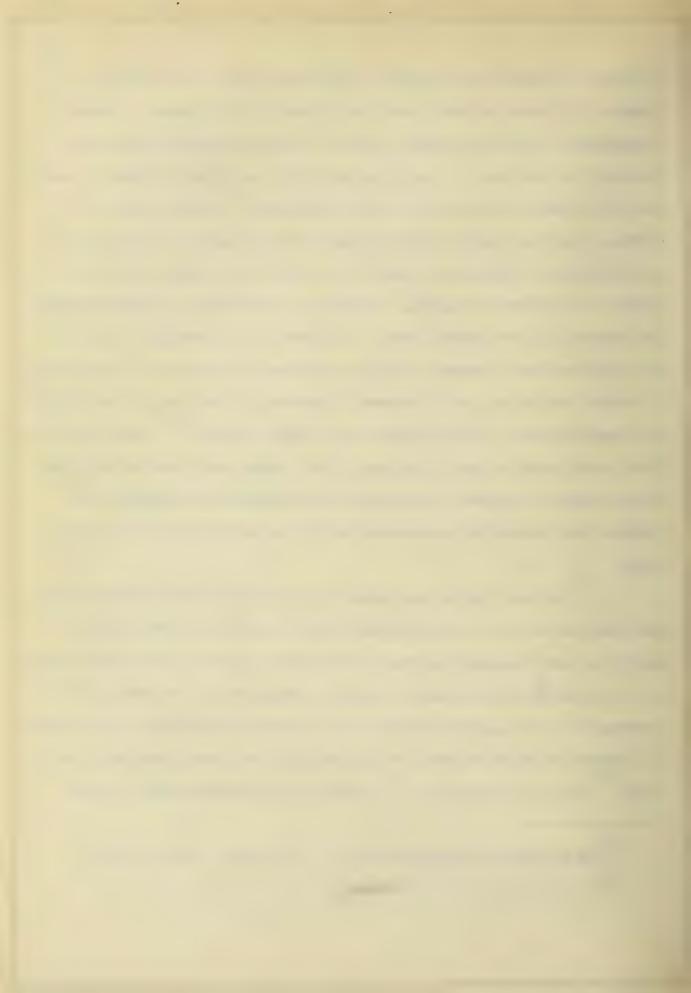
mediately discharged; and this as often as they may offend. Again, all lords of parliament and peers of the realm .. shall be discharged in all clergyable and all other felonies without any burning in the hand .. but this only for the first offense. Lastly all the commons of the realm, not in orders, whether mais or female, for the first offense shall be discharged of the capital punishment of felonies within the benefit of clergy, upon being burnt in the hand, whipped, or fined, or suffering a discretionary punishment in the common gaol, the house of correction, one of the penitentiary houses, or in the places of labor for the benefit of some navigation; or in cases of larceny, upon being transported for seven years, if the court shall think proper." Save for the fact that branding was practically abolished and that transportation became a general penalty for all clergyable felonies the system thus described continued until the abolition of the privilege.

In the fourth parliament of George IV the reformers who had been at work on the criminal law for some time were able to make the most marked progress since the agitation for a more humane and more efficient criminal law had commenced, and to secure the passage of acts allowing benefit of clergy to offenders in a number of lesser felonies wherein the privilege had been previously denese.

By 7 & 8 George IV, 27 over 125 statutes bearing upon

⁶⁴ Blackstone, Commentaries, bk. IV, chap. XXVIII, sec. 2.

^{65 4} Geo. IV, 46, sec. 53-54.



benefit of clergy were repealed; and in the following chapter concealed among a number of other provisions it was enacted "That the Benefit of Clergy with respect to persons convicted of Felony, 66 shall be abolished."

Thus almost hidden among the measures of a great reform passed benefit of clergy, in its beginning the treasured liberty of the church, at its end a mere detail of the criminal law; "very considerably different from its original institution: the wisdom of the English legislature having, in the course of a long and laborious process, extracted by a noble alchemy rich medicines out of poisonous ingredients; and converted by gradual mutations, what was at first an unreasonable exemption of particular popish ecclesiastics, into a merciful mitigation of the general law, 67 with respect to capital punishment."

^{66 7 &}amp; 8 Geo. IV. 28, sec. 6.

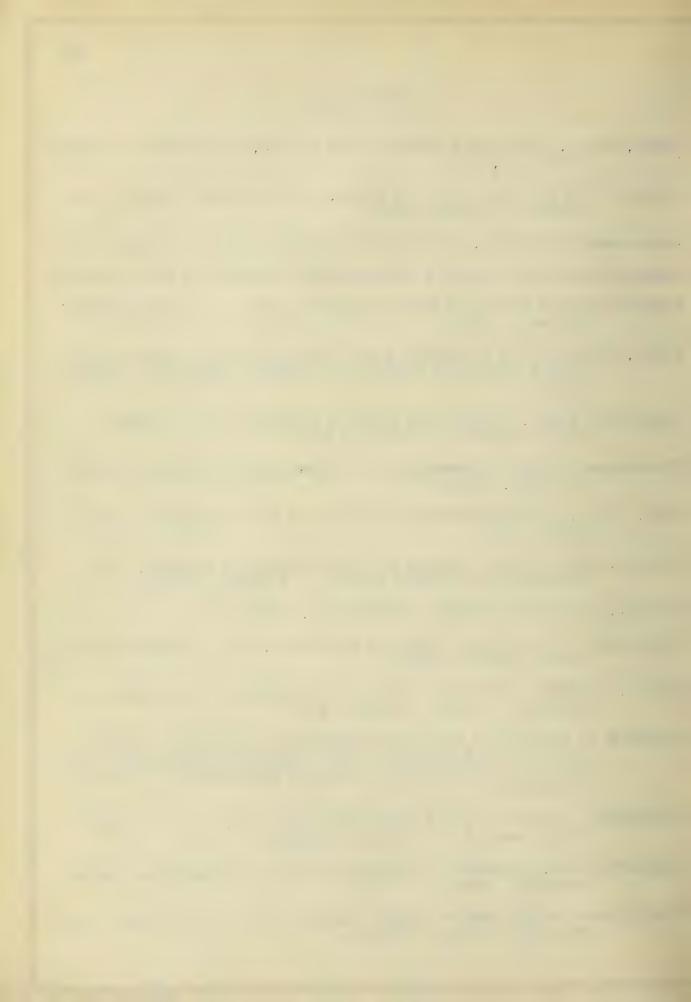
⁸⁷ Blackstone, Commentaries, bk. IV, chap. XXVIII, sec. 1.



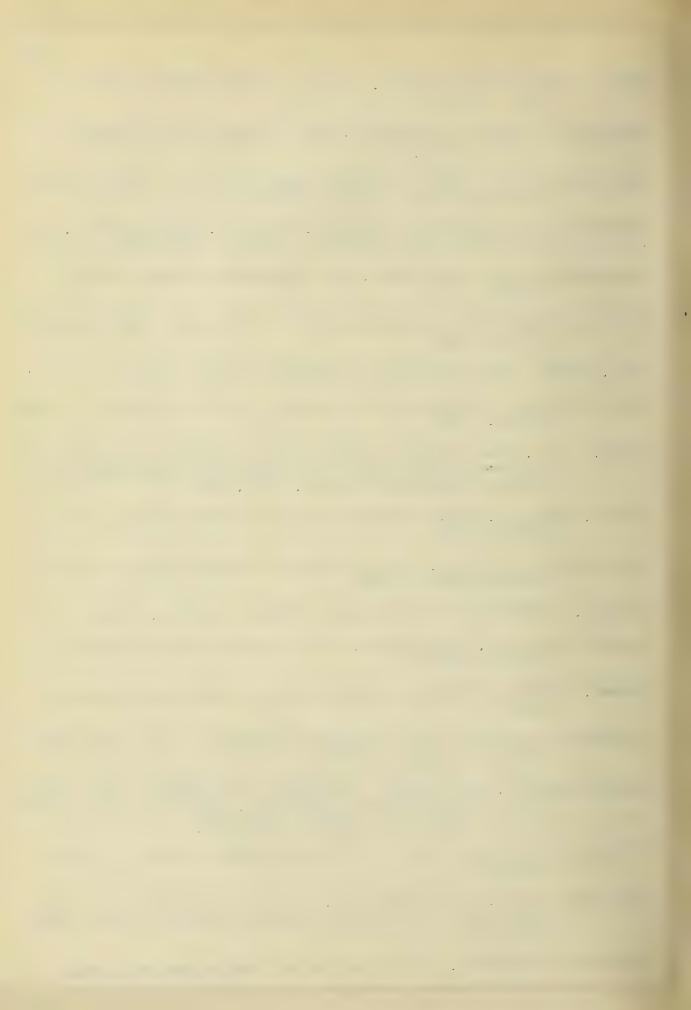
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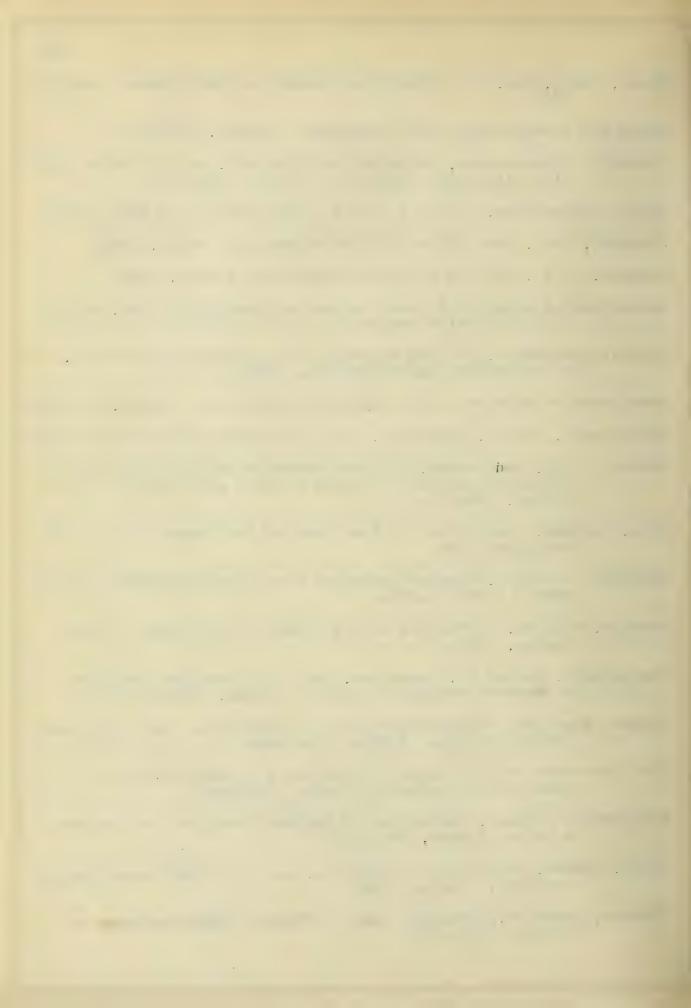
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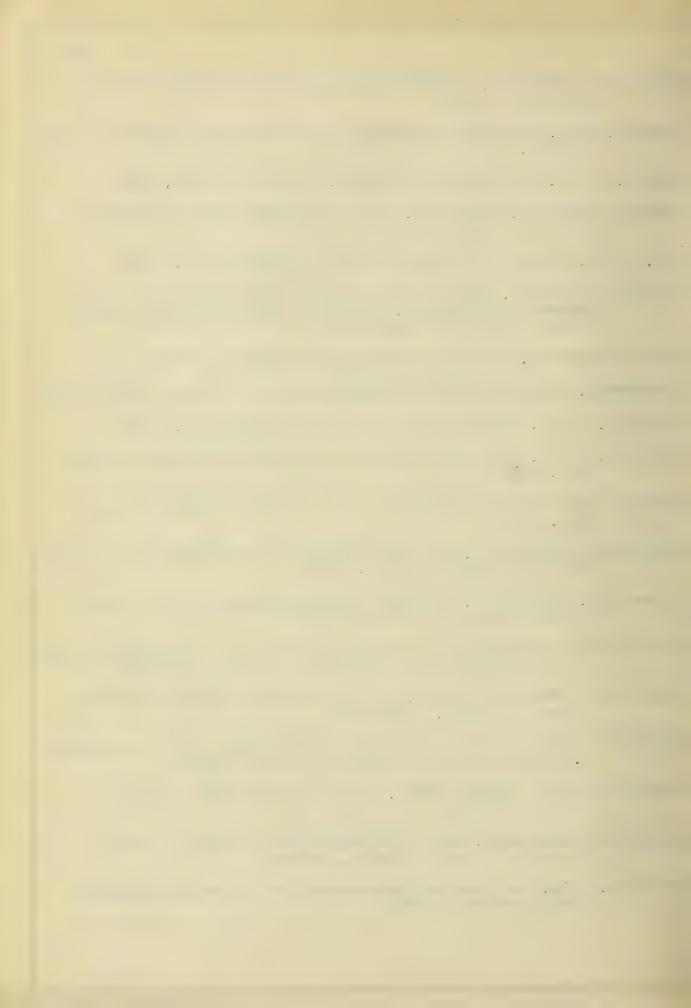
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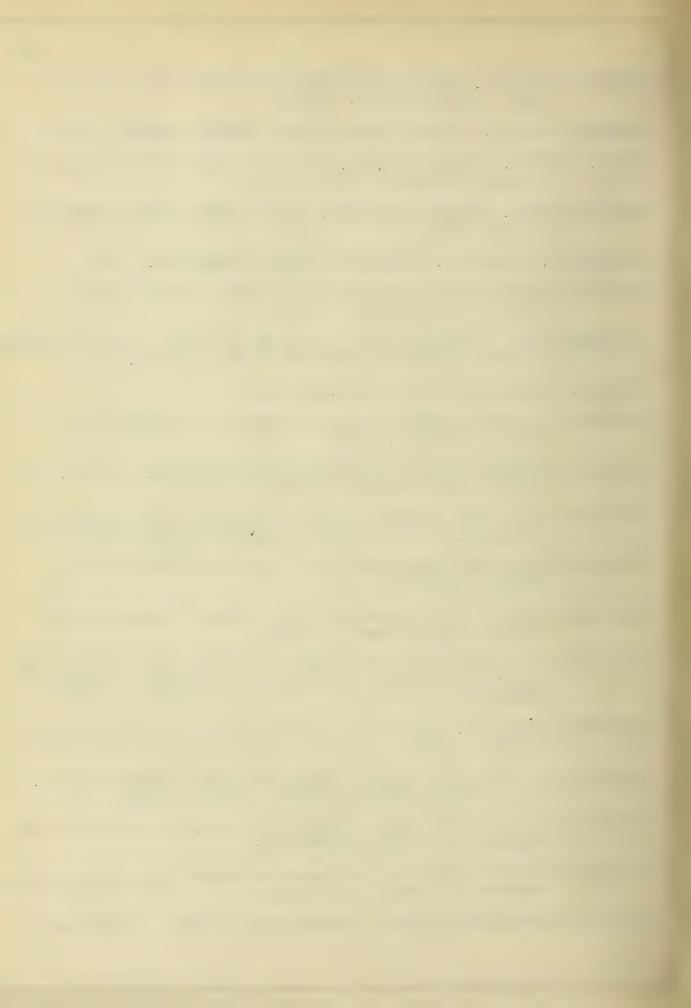
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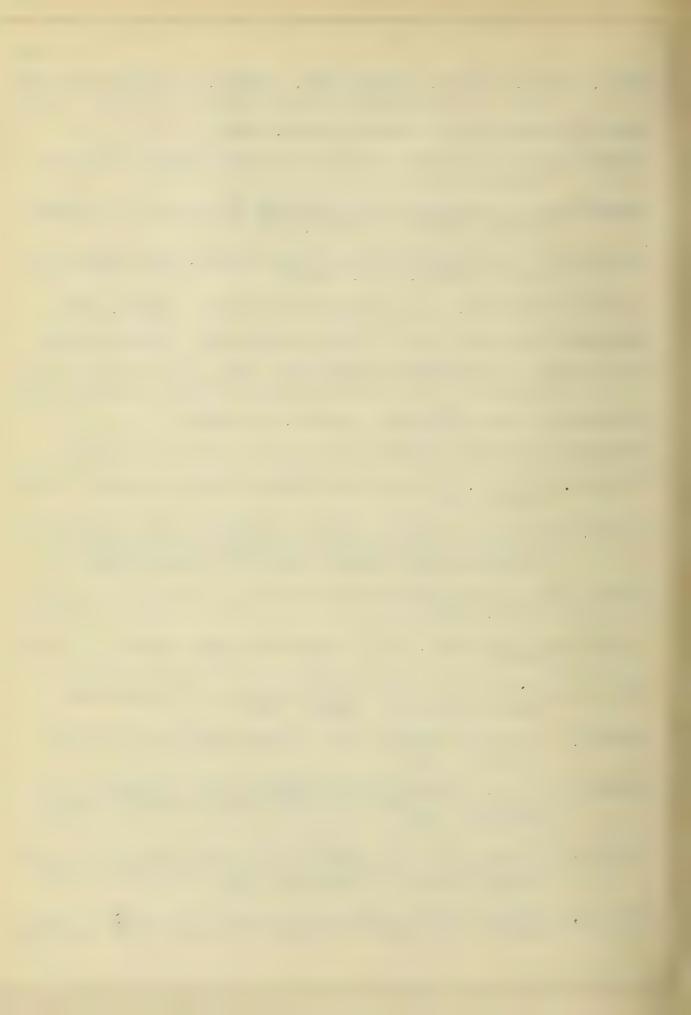
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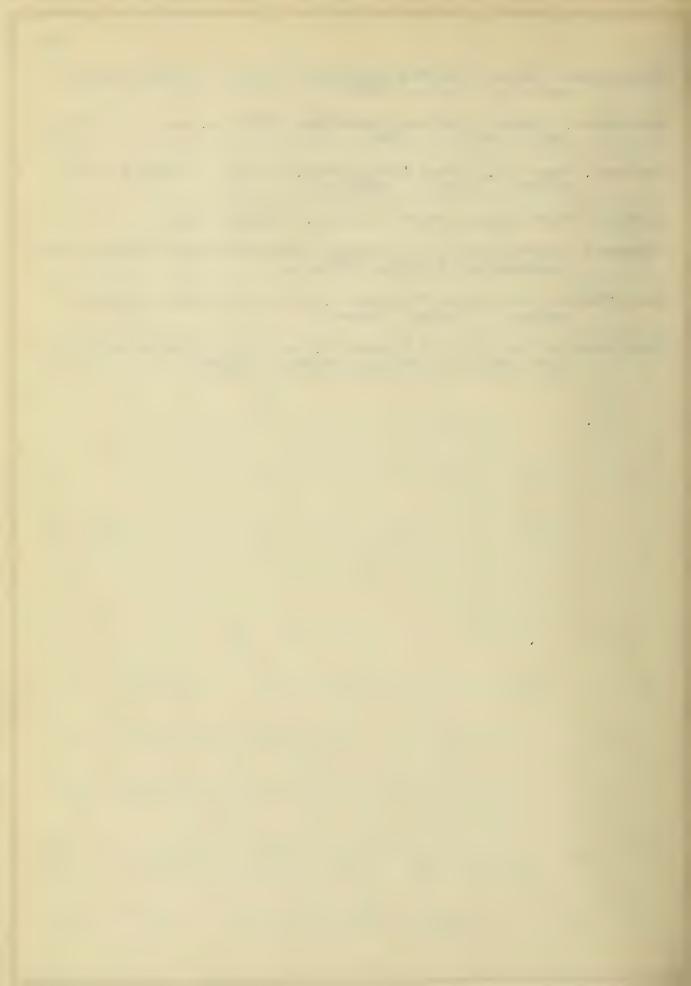
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VITA

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